S. HRG. 98-914

PRESIDENT'S COMMISSION ON ORGANIZED CRIME

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. J. Res. 233

A JOINT RESOLUTION TO AUTHORIZE THE PRESIDENT'S COMMISSION ON ORGANIZED CRIME TO COMPEL THE ATTENDANCE AND TESTIMONY OF WITNESSES AND THE PRODUCTION OF INFORMATION

MAY 9, 1984

Serial No. J-98-120

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

35-271 O WASHINGTON : 1984

S521-62

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PRESIDENT'S COMMISSION ON ORGANIZED CRIME—S.J. RES. 233

WEDNESDAY, MAY 9, 1984

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 11:10 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Charles E. Grassley (acting chairman) presiding.

Also present: Senators Laxalt, Thurmond, and Biden.

Staff present: Paul Summitt, special counsel, full committee; Lynda L. Nersesian, chief counsel and staff director, and Terry T. Campo, counsel, Senator Grassley's staff; John F. Nash, Jr., chief counsel and staff director, and Willliam S. Miller, Jr., general counsel, Senator Laxalt's staff.

OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY

Senator GRASSLEY. I would like to call this hearing to order. This morning we are going to hear from the distinguished chairman of the President's Organized Crime Commission.

The Organized Crime Commission, of course, was created last year by an Executive order of the President of the United States. And it was the stated purpose of the Commission to investigate the nature of organized crime as it exists today and examine where it is headed in the future, its sources of power, and as well, to recommend ways to combat its influence on American life.

Last week this committee heard testimony on another bill, where a witness from the Federal Bureau of Investigation agreed with the statement that organized crime in America is today just as powerful, if not in fact more powerful, than it has ever been.

That witness also agreed that a major source of its power is the ability of organized crime figures to act through legitimate organizations and through public officials as well as the stereotypical violence and coercion that most Americans picture when they think of organized crime.

Hearings of the Congress have indicated that organized crime today involves more than La Cosa Nostra-type families typified by the prosecutions of the Appalachian Mountain meetings over which the Chairman of the Commission, Judge Kaufman, presided more than two decades ago.

Today organized crime includes motorcycle and street gangs, Chinese tongs, and increasingly new permutations of the criminal element of our society. Faced with the increasing ability of organized

crime to coerce legitimate organizations and give an unfair advantage to those who cooperate with them, the need to find effective ways to restrain the power of organized crime seems very clear. The only question is how best to do that.

Legislation has been introduced in the Senate to give the President's Commission on Organized Crime the power to issue subpenas and enforce them, to receive the texts of intercepted wire transmissions, and an array of other powers. The House passed a significantly different version of authority for the Commission only the day before yesterday.

Certainly, no one in this country can question the need to combat organized crime. But questions have arisen over the extent to which another agency of Government is in fact needed for the purpose of combatting organized crime or whether we would be better off strengthening existing agencies. Additional questions concern the extent to which a commission and its staff with no higher authority to be accountable to, might threaten or injure the reputation of innocent victims of organized crime who unwittingly become involved with a person who is associated with criminal elements, and what recourse those people would have.

Gentlemen, it seems to me that this Congress is willing to give a great deal of authority to you, and you say that you need it. And we are willing to do that if the Congress is satisfied that you will handle that power responsibly and adequately within the context of your relatively small staff.

Before testimony, I would call next on Senator Laxalt who was here next and then Senator Thurmond.

Senator LAXALT. May I yield to the chairman?

Senator GRASSLEY. Mr. Chairman.

OPENING STATEMENT OF SENATOR PAUL LAXALT

Senator LAXALT. You want me to go ahead? I thank the chairman and I thank Chairman Thurmond. I do not have any prepared remarks except to say this, that from the outset I have supported the administration's position in constituting this group.

And I supported the Attorney General's move in order to go ahead and implement it. And, Judge Kaufman, I know you are a full time sitting Federal judge and I know you probably need this additional responsibility like a hole in the head. But as far as this Senator is concerned, I want to commend you for assuming this responsibility. Recognize in me that you have a kindred soul, because I have a few hats on myself.

Somehow, with a competent staff, you can get the job done. I think that Chairman Grassley has defined the problem philosophically. Is this the kind of pursuit that can best be done within existing resources? I rather think not because the track record is otherwise.

I think we have to go to a group of this sort in order, very frankly, to get the job done. What the chairman said in respect to the great vulnerability we have in any of these pursuits is what you do about protecting the interests of innocent persons. And in our discussion before the hearing you outlined that you were concerned

about that because you have seen this type of thing in your experience as a Federal judge.

I would think that is our chief challenge here, to go out and do this responsibly and not trample on the rights of private citizens and protect innocent people as best we can. So, as far as I am concerned, I commend you and wish you well.

Senator GRASSLEY. Senator Thurmond, the distinguished Chairman of the Judiciary Committee and a member of the Commission.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. Thank you, Mr. Chairman. Senator Laxalt covered everything so well that it is unnecessary for me to say much more. I think you have said about all I intended to say, Senator.

I just want to say to Judge Kaufman that it is a great pleasure to have you here at the Capitol and before the Judiciary Committee.

I want to thank Senator Grassley for holding this hearing. I am in another extremely important hearing. I will be very interested to read this testimony and I want to thank you, Judge Kaufman, too for taking on this added responsibility. It is something you did not have to do. You are going above and beyond the call of duty, but your record indicates that everything you have done you have done it well. I am sure that you are going to continue to do a great job as chairman of the President's Commission on Organized Crime.

Some people did not think that the President needed to appoint a commission. I thoroughly agree with Senator Laxalt that he did. I commend the President for doing it. I further commend him for choosing you as the chairman of this Commission. I am honored to be a member of this Commission and serve with you. I wish to cooperate with you in every way I can.

So do not hesitate to pass on any suggestions or requests that you feel, as a member of the Commission, I can help you with. We want to cooperate to the fullest.

Senator GRASSLEY. Before we receive the first witness I wish to place a copy of S.J. Res. 233 in the record.

[Text of S.J. Res. 233 follows:]

II

98TH CONGRESS
2D SESSION

S. J. RES. 233

To authorize the President's Commission on Organized Crime to compel the attendance and testimony of witnesses and the production of information.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9 (legislative day, FEBRUARY 6), 1984

Mr. THURMOND (by request) introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

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JOINT RESOLUTION

To authorize the President's Commission on Organized Crime to compel the attendance and testimony of witnesses and the production of information.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That for purposes of this joint resolution—

(a) the term "Commission" means the Commission established by the President by Executive Order 12435, dated July 28, 1983, as it now exists and as it may be extended pursuant to amendments to that order;

(b) an oath taken before the Commission, or before a member of the Commission or a member of

the staff of the Commission designated by the Commission for such purpose, shall be deemed to be an oath taken before a competent officer or person within the meaning of section 1621 of title 18, United States Code (relating to the offense of perjury);

(c) a proceeding before or ancillary to the Commission shall be deemed to be a matter within the jurisdiction of, or before, a department or agency of the United States within the meaning of section 1001, of title 18, United States Code (relating to the offense of making a false statement) and section 1505 of title 18, United States Code (relating to the offense of obstruction of proceedings);

(d) a proceeding before or ancillary to the Commission shall be deemed to be an official proceeding within the meaning of section 1512 of title 18, United States Code (relating to tampering with a witness, victim, or an informant) and section 1513 of title 18, United States Code (relating to retaliating against a witness, victim, or an informant); and

(e) for the purposes of section 7, the terms "agency", "individual", "maintain", "record", and "accounting" have the meanings set forth in section 552a, title 5, United States Code.

SEC. 2. ISSUANCE OF SUBPENAS.

The Commission shall have the power to issue subpenas, under the signature of the Chairman of the Commission or of another member of the Commission authorized by the Commission, requiring the attendance and testimony of witnesses before the Commission, or before a member of the Commission or a member of the staff of the Commission designated by the Commission for such purpose, and the production of information relating to a matter under investigation by the Commission. A subpena may require the person to whom it is directed to produce such information at any time prior to the time at which such person is to testify, and may require the attendance of a witness and the production of information from any place within the jurisdiction of the United States at any designated place of hearing.

SEC. 3. ENFORCEMENT OF SUBPENAS.

In case of contumacy or refusal to obey a subpena issued to a person under section 2, a court of the United States within the jurisdiction of which the person is directed to appear or produce information, or within the jurisdiction of which the person is found, resides, or transacts business, shall have jurisdiction, upon application by the Attorney General on behalf of the Commission, to issue to such person an order requiring such person to appear before the Commission, or before a member of the Commission or a member of the staff of the Commission designated by the Commission for such

purpose, there to give testimony or produce information relating to the matter under investigation, as required by the subpena. A person who fails to obey such order of the court may be punished by the court as provided in section 401 of title 28, United States Code (relating to criminal contempt), or may be confined pursuant to section 1826 of title 18, United States Code (relating to civil contempt), but such confinement shall not exceed the life of the Commission, including extensions, and in no event shall such confinement exceed eighteen months.

SEC. 4. TESTIMONY OF PERSONS IN CUSTODY.

If the Commission determines that it requires the testimony of a person in custody, a court of the United States within the jurisdiction of which the person is to testify, or within the jurisdiction of which such person is held in custody, shall have jurisdiction, upon application by the Attorney General on behalf of the Commission, to issue a writ of habeas corpus ad testificandum requiring the custodian to produce such person before the Commission, or before a member of the Commission or a member of the staff of the Commission designated by the Commission for such purpose.

SEC. 5. COMPULSION OF TESTIMONY.

If a person who has been or may be called to testify or provide other information refuses, on the basis of his privilege against self-incrimination, to testify or provide such informa-

tion, the Commission may, with the approval of the Attorney General, issue an order requiring the person to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination in the same manner and subject to the same conditions as an agency of the United States is authorized to issue such an order pursuant to sections 6001, 6002, and 6004 of title 18 United States Code.

SEC. 6. TAKING OF TESTIMONY AND RECEIPT OF EVIDENCE.

The Commission, or a member of the Commission or member of the staff of the Commission designated by the Commission for such purpose, may conduct hearings, administer oaths and affirmations, examine witnesses, and receive documentary or other information in evidence.

SEC. 7. ACCESS TO OTHER AGENCY RECORDS.

(a) Disclosure otherwise prohibited by subsection (b), of section 552a of title 5, United States Code, of a record maintained by an agency, may, upon application to such agency by an attorney for the Commission who has been authorized by the Commission to make such an application, be made to the Commission and members of the staff of the Commission for use in the performance of the Commission's duties.

(b) An agency disclosing a record under subsection (a) shall not make the accounting required by subsection (c) of

section 552a of title 5, United States Code, to be made available to the individual named in the record.

SEC. 8. LIMITATIONS ON DISCLOSURE.

A person to whom disclosure of information is made under section 7, shall use such information solely in the performance of his duties for the Commission and shall make no disclosure of such information except as provided for by this joint resolution, or as otherwise authorized by law.

SEC. 9. SERVICE OF PROCESS, WITNESS FEES.

(a) Process and papers issued by the Commission, or by a member of the Commission or a member of the staff of the Commission designated by the Commission for such purpose, may be served in person, by registered or certified mail, by telegraph, or by leaving a copy thereof at the residence or principal office or place of business of the person required to be served. When service is by registered or certified mail or by telegraph, the return post office receipt or telegraph receipt therefor shall be proof of service. Otherwise, the verified return by the individual making service, setting forth the manner of such service, shall be proof of service.

(b) Process of a court to which application may be made under this joint resolution may be served in a judicial district wherein the person required to be served is found, resides, or transacts business.

(c) A witness summoned before the Commission, or before a member of the Commission or a member of the staff of the Commission, shall be paid the same fees and mileage as are paid witnesses in the courts of the United States, and a witness whose deposition is taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Senator GRASSLEY. We now turn to the Honorable Irving R. Kaufman, Chairman of the President's Commission on Organized Crime and ask you, if you would, to introduce your associates at the table with you.

STATEMENT OF HON. IRVING R. KAUFMAN, CHAIRMAN, PRESIDENT'S COMMISSION ON ORGANIZED CRIME, ACCOMPANIED BY JAMES HARMON, EXECUTIVE DIRECTOR AND CHIEF COUNSEL; AND, RODNEY SMITH, DEPUTY EXECUTIVE DIRECTOR

Judge KAUFMAN. Thank you very much, Senator Grassley. To my right is Jim Harmon, our Executive Director and Chief Counsel; and to my left is Rodney Smith, who is the Deputy Executive Director of the Commission.

Senator GRASSLEY. Proceed.

Judge KAUFMAN. I would like to thank Chairman Thurmond at the outset for his kind words, and to say that I return in kind the thought that you took on additional service with this Commission that you did not have to. Your presence has given us strength and additional importance and we hope that you will continue to serve us as you have served us very well in the past. And I thank you very much.

In inverse order, I thank you, Senator Laxalt, for your kind words and, Senator Grassley, you will now have me for a few minutes as I will proceed, and I thank you for your opening statement.

During my 35 years as a Federal judge—and that seems almost like a century, I suppose—I have had the privilege of appearing before the Committee on the Judiciary on numerous occasions. Today, however, I offer this statement not in my role as a member of the Federal Judiciary, nor as a representative of the U.S. Judicial Conference, but rather as the chairman of the President's Commission on Organized Crime, to urge your favorable consideration of Senator Thurmond's Joint Resolution 233.

In announcing the establishment of this Commission in July 1983, President Reagan charged us with the difficult task of conducting a nationwide investigation of organized crime in both its traditional and emerging forms and producing recommendations for legislative change, reforms in the administration of justice, and institutional remedies which would allow Federal, State, and local law enforcement authorities to confront more effectively the growing power of organized crime.

As one aspect of this mandate, the Commission has been directed to expose to the American public the nature and scope of organized criminal activity through a series of public hearings conducted across the Nation. The President, in his remarks in the Rose Garden indicated that such was his desire and he hoped that the Commission would follow this course.

Cognizant of the enormity of our mission, the Commission on Organized Crime has commenced its investigation with dedication and vigor. The membership of the Commission includes persons with a broad range of expertise concerning the problems engendered by organized crime. Virtually all of the commissioners are or have been engaged in law enforcement, some as prosecutors, others as investigators or police officers. The Commission also includes

two members of the Federal Judiciary, your speaker and Supreme Court Justice Potter Stewart; two members of Congress, Chairmen Thurmond and Rodino; two professors of law; and a number of practicing attorneys.

Our staff includes some of the Nation's most experienced organized crime prosecutors with several attorneys who were members of the special organized crime strike forces which operate across the country. Jim Harmon was one of them. The Commission's investigators include agents from the Federal Bureau of Investigation, the Department of Labor, the Internal Revenue Service, and other Federal and State agencies. Together the commissioners and staff bring many years of insight and experience to our investigation. We believe that as a group, the President's Commission on Organized Crime is uniquely well situated to conduct an in-depth, comprehensive investigation of organized crime.

The Commission has successfully launched this effort. We have conducted two public hearings—although I must confess with some difficulties, because we did not possess subpoena power—the first in Washington, D.C. in November, and recently in New York City. At our hearing in New York, we explored the problems engendered by financial laundering schemes, and we received testimony from a number of witnesses, including a Federal agent with direct experience in laundering schemes, a major organized crime figure, and an official from the U.S. Department of Treasury. The Commission has also commenced work on several projects that may lead to the issuance of periodic staff reports.

As you know, Chairman Thurmond has introduced, at the request of the Department of Justice, Senate Joint Resolution 233 which would enable the Commission to subpoena witnesses, would authorize the initiation of civil or criminal contempt proceedings against persons who ignore these subpoenas and would provide in appropriate cases for the compulsion of testimony with the aid of the Attorney General from recalcitrant witnesses who invoke their constitutional privilege against self-incrimination.

It has become increasingly clear that unless Congress acts favorably on our request for subpoena, contempt, compulsion of testimony, and other powers, we will be unable to fulfill the President's mandate. And I believe that it is critical and it is urgent that the Commission be vested with such authority if its work is to succeed It is our hope that members of the committee will appreciate the importance and urgency of these needs and will act expeditiously on the resolution which Chairman Thurmond has introduced.

As this committee proceeds with its consideration of Senate Join Resolution 233, I would commend to your attention the provision of House Joint Resolution 548, to which Senator Grassley has referred, which was passed 2 days ago. I should also note that th House Joint Resolution 548 has consistently enjoyed bipartisan interest and support. Both the full Judiciary Committee and the Subcommittee on Crime voted unanimously in favor of the resolution and it was passed by a voice vote in the House.

Although our investigation is still in its early stages, we have a ready encountered significant reluctance among individuals w have asked to meet with members of the staff, much less to appea at a public hearing. Persons who have been involved in unlawfu

activities are understandably not enthusiastic over the prospect of presenting information to the commission. Even more troubling, however, has been the reluctance of respectable, law-abiding members of the public to provide testimony or evidence to the Commission and its staff. As our work progresses, we have every reason to believe that this problem will become even more critical, since prospective witnesses may have engaged in questionable conduct. Unless we are authorized to issue subpenas and seek their enforcement through court orders of contempt with the aid of the Attorney General, we are simply unable to develop and present the information we must to fulfill our mandate.

I ask, what end does it serve to have a Presidential commission to investigate organized crime if it lacks subpena power and is unable to compel attendance, testimony, the production of information?

An additional critical requirement of the Commission on Organized Crime is not addressed in the proposed Senate resolution, but it is noted in the House version. It is widely recognized that court authorized wiretaps are a vital tool in investigations of organized crime figures. And the Commission seeks legal authority to obtain access, where appropriate, to the transcripts of court authorized wiretaps already in existence. We do not, however, seek wiretap authority for the Commission.

The value of electronic surveillance in organized crime investigations cannot be overstated. Indeed, the legislative history of title III of the Omnibus Crime Control and Safe Streets Act of 1968 is replete with references to the importance of wiretaps in organized crime trials. The Senate report accompanying the draft bill, for example, quotes New York District Attorney Frank Hogan as stating that "wiretapping is an indispensable weapon in the fight against organized crime," and the report further observes that "electronic surveillance techniques by law enforcement officials are indispensable legal tools" in organized crime cases. Similarly, the final report of President Lyndon Johnson's Commission on Law Enforcement and Administration of Justice—which I believe was issued in 1967—noted that wiretaps are the most important tool which law enforcement authorities can employ in investigations of organized crime figures.

I emphasize that the Commission does not request authorization to conduct electronic surveillance, nor does it seek to disclose or to use information obtained through properly authorized wiretaps where such use would jeopardize law enforcement interests. The Commission believes, however, that title III information now available would be invaluable both in examining the wide range of activities in which criminal cartels engage and in developing proposals to counteract the influence of these groups. The Commission does not seek blanket authorization to disclose the contents of the transcripts it may obtain, but does request authorization to make such disclosure in a limited number of cases. We would, of course, work closely with all concerned agencies to guarantee that no disclosure would compromise an ongoing investigation or would improperly disclose confidential investigative techniques, and I might add to assure that the reputation of an innocent party is not harmed.

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The proposed statutory authorization concerning the Commission's access to this material provides explicitly for formal review of our requests by the Attorney General or his designee. I am confident this mechanism is more than adequate to protect the interests of all parties in these instances.

Thus far the President's Commission on Organized Crime has been undaunted in its effort to fulfill its goals without relying on subpena, contempt and compulsion authority, but it has been a frustrating task. I cannot emphasize strongly enough that time is of the essence, and I ask this committee to move forward with all possible dispatch as did the House Judiciary Committee. It is clear that the longer the passage of this resolution is delayed, the more difficult it will be for the Commission to undertake its vital mission. The problem of organized crime is one which affects every American citizen. This disease transcends all geographic, ethnic, and social divisions and is truly a matter of national concern. We urge your prompt action on Senate Joint Resolution 233 so we may be able to proceed forthwith and accomplish the critical task to which we have been assigned.

And before I invite questions for myself and my two associates, I would like to call your attention to a statement made by the President at the Rose Garden ceremony when the establishment of the Commission was announced.

He said, "More than 23 years ago, as he sentenced defendants in a trial following the notorious Appalachian Conference in upstate New York, a Federal judge"—well, I might as well identify him; I am the fellow—"noted that the defendants before him had not stumbled into criminal activity thoughtlessly or because of underprivileged backgrounds. He referred to them as hardened, sophisticated criminals"—and this is the President speaking—"who thought of themselves as a group above the law, men who placed loyalty to each other above loyalty to their country and its law abiding citizens. He noted that these men wear two faces, that they cloak themselves in the respectability of charitable or civic organizations even as they work to prey on innocent people or undermine the very moral foundations of our society." And he concluded, "Judge Kaufman, your words were true then and unfortunately they are true today. I want you and the members of the Commission to know as you seek subpena power from the Congress and go about the difficult tasks ahead of you that you have my full support, and the support of the Attorney General," who has been, I must say, most supportive.

Before the Rose Garden ceremony there was a press conference and I would just like to read one paragraph of my statement from that occasion before I submit myself to questioning. I said, "Organized crime is like a pervasive cancer spreading throughout all levels of society. It is not enough to kill individual cells; we must devise new ways of getting at the cancer itself or we will never be rid of the scourge of organized crime. Organized crime is not merely a collection of criminals, but an institution which operates and even flourishes as some of its members are arrested and imprisoned."

And so I will end on this note: I am conscious of the fact that so many individuals, members of the media, decent citizens have

asked, why does organized crime flourish? The law enforcement agencies seem to be doing a thorough job and yet organized crime remains with us. It has been with me throughout my life. The leaders of organized crime get very stiff prison sentences and yet there seems to be a stand-in ready to take his place. And so once again I refer to medical metaphor I have used. It is not pleasant, but nevertheless it is apt. Organized crime is like a cancer. We attack cancer today with chemotherapy and surgery and unfortunately we have not found a cure. It goes into remission and that is what happens with organized crime. An important member is prosecuted, and I might say ably prosecuted by dedicated men and women. He is convicted, but somebody is ready to take his place in a few months, or he directs the work of organized crime from prison. I think this problem is what the President and the Attorney General had in mind when they established this Commission. They saw that organized crime continued to thrive in this country and they felt we ought to try a Commission which could explore new approaches. I said that I would be willing to undertake the Commission, reluctantly, but nevertheless I agreed to take on the task.

Thank you very much.

Senator GRASSLEY. Well, we would sure hope that your work is not in vain and I suppose that as I would think about your historical perspective that you just gave of the problem, that a sports term ought to be applied: maybe there has not been enough follow through.

My initial reaction to your testimony is very favorable and obviously I hope you are successful. As a partisan Republican, obviously my reaction to the President's leadership in this area is to stand on the soap box and cheer and I think the overwhelming majority of the American people would cheer as well.

But then in your statement you kind of bring about the historical perspective that somewhat bothers me, in that you made reference to President Johnson's commission and I am 50 years old, but I think maybe in the 25 years I have been in public life I remember three or four Presidents in addition to even President Johnson that have had a war on crime.

So I guess what I want—what I hope comes out of this war on crime and this commission and this President's leadership is follow through so that it is not something just in remission but so that it is stamped out and so that there is a victory in the war on crime.

Now, maybe that is too idealistic. I do not know. But I would sure hope so. I speak from the standpoint of frustration as I consider the Presidents who have likewise shown leadership in this area.

Judge KAUFMAN. I speak from the same sense of frustration, but I intend to overcome it in due time. At least we will do everything to overcome it. The distinction between all the other commissions that were appointed is that they did not focus exclusively on organized crime. For example, President Johnson's commission was an overall commission charged with the responsibility of surveying crime in America. One aspect of their study was organized crime, and it is interesting that the person who headed that was Lewis Powell, who had just finished as president of the American Bar Association and returned to practice. And so the section of the report on organized crime was drafted by him and his associates.

The distinction between previous commissions and this Commission is that our President has seen fit to have the Commission devote itself exclusively to the question of organized crime and not to other facets of crime. So it may be that we have a working formula.

Senator GRASSLEY. I would be delighted to defer to Senator Laxalt for questions before I ask questions.

Senator LAXALT. I thank the chairman.

Judge Kaufman, I guess you are still in the process of establishing mechanisms and procedures internally. I might say, based upon my own experience, that one of the great laments that I hear from commission members—and Lord only knows we have had our fair share of them around here—is the fact that staff does not consult with the Commission members on a regular structured basis. As a result they feel like they are out in limbo and are not part of the decisionmaking process. That concern is coupled with the fact that if something goes wrong during the course of these hearings and people are maligned and a lawsuit ensues, every one of the members of the Commission is personally liable. I wonder whether or not you have established procedures here or whether you contemplate establishing such procedures to make the members of the Commission part of the decisionmaking operation, particularly the areas of investigation that are going to be pursued and particularly the individuals that may be pursued.

Judge KAUFMAN. I would be pleased to respond to that, Senator, because it is a matter of concern to me, too. I said at the Rose Garden, I remember, my closing statement was this will neither be a witch hunt nor a whitewash. I intend to conduct this Commission on that basis, after my training of 40 years in the public service—five in the U.S. attorney's office, 35 on the bench. I have a natural revulsion against the smearing of innocent people.

I have seen too much of that at public hearings. Therefore, to respond directly to your question, one of the difficulties that has confronted us—and I hope the House bill will take care of it, is that we cannot have closed meetings of the Commission, because of the Sunshine Act. What this Commission must address is very confidential information, and so that we guard against smearing anybody, we cannot possibly have only open hearings; we must have closed sessions. The provisions of the Sunshine Act which govern closed meetings are very technical and very difficult, and if we have a meeting of the Commission, it has to be in open session, unless we spell out specifically what we are going to talk about. We should have far more leeway, and I think the House resolution includes a provision empowering me to decide when to close a meeting. In other words, I would exercise what they refer to as the power of the President; although it would really be the power of the Attorney General.

In order to have a closed hearing now, we have to write a letter to the Attorney General. He has to decide that the matters that we have to take care of in this closed session are appropriate and fit into the exceptions of the Sunshine Act, and so forth.

We should have the authority to screen the testimony of witnesses in closed session. That is one way of guarding against someone blurting out something about an innocent person. Moreover, it

gives us an opportunity to build up this rapport with staff and for staff to have an opportunity to brief the full Commission on a regular basis and to know that every month or every 6 weeks the Commission is going to meet in closed session. Of course, there will have to be accountability; staff will have to tell us what it is doing, what it has done, and where it is going.

Senator LAXALT. Has that been done thus far?

Judge KAUFMAN. We cannot have those closed sessions. I will say——

CLOSED HEARING RESTRICTIVE

Senator LAXALT. Let me see if I understand you. Under the present and, I rather think, restrictive provisions under which you are operating, you cannot have a closed session with staff?

Judge KAUFMAN. The moment you call a hearing of the Commission under both the Federal Advisory Committee Act and the Sunshine Act, you have to have notice in the Federal Register stating that this will be a closed hearing. You must also obtain permission to have a closed hearing from the Attorney General, and you must utilize the general language of the Sunshine Act in order to get that exception.

Senator LAXALT. How in the world can you effectively operate with that kind of restriction?

Judge KAUFMAN. We cannot effectively operate. It is an awful lot of redtape and it makes it very difficult. The commissioners have been frustrated because we cannot have a meeting. Some have even asked whether we can have lunch together and not call it a meeting. You know the first thing that will happen would be that it would be challenged, and this is precisely why we require explicit legislative authority to meet in closed session.

Senator LAXALT. Well, do you think that the House action remedied this to some extent? Do I understand you properly?

Judge KAUFMAN. Let me ask Mr. Harmon. Do you think the House provision remedied that?

Mr. HARMON. It did to some extent, Senator Laxalt, by vesting the authority in the chairman to decide whether or not the provisions of the Sunshine Act could be complied with, whether we fit within these certain narrow exceptions.

Senator LAXALT. Is that subject to a signoff by the A.G. or can the chairman do that on his own initiative?

Mr. HARMON. Under the House bill, yes, sir, but the exceptions under the Sunshine Act would not cover all of the things that we would want to discuss with the Commission during the course of a closed meeting.

Senator LAXALT. What additionally would you include, Mr. Director?

Mr. HARMON. Very general matters, staff matters, directions of investigations; the ideal thing, I would submit, sir, from the viewpoint of the staff and from the viewpoint of the Commission would be to have an exemption from that provision which would permit within the discretion of the chairman to close a Commission meeting.

I might add, I am following up on what the judge said, that we feel one of the most important reasons for the ability to subpoena witnesses, especially to subpoena them into the staff's offices, is to screen evidence and to make sure that before people's names are thrown around—and in my experience criminals do that and they find it very convenient for their own purposes to do that in all sorts of instances, that we want to be sure and we want to develop reliable evidence in private so that at a closed meeting we could bring that to the attention of the Commission and then the Commission could make its own decision as to whether or not the disclosure furthers the mandate from the President.

Senator LAXALT. I gather then that it is your rather strong recommendation to this committee that we proceed in accordance with your suggestion. Is that your recommendation to us?

Judge KAUFMAN. Yes, it is.

Senator LAXALT. I assume so.

Judge KAUFMAN. It is in everybody's interest.

SUBPENA POWER AUTHORITY

Senator LAXALT. Since you mentioned subpena, let me pursue that just a little bit. I am not going to take much time here, Mr. Chairman, because I have to move on as well. As you know, there is concern out of the Department concerning the subpena power.

Do you share that concern in any degree, Judge?

Judge KAUFMAN. I have not participated in that. I must confess, Senator, I have tried to remain above the fray on this matter and let staff handle it, just as I do not think the Attorney General has personally participated in this discussion.

Senator LAXALT. I think it has been on a staff level. The concern is whether or not the issuance and grant of this kind of power could impede ongoing investigations within Justice. Is that essentially their concern, Mr. Director?

Mr. HARMON. That is the concern that has been expressed by the Department.

Senator LAXALT. And it has been expressed to the committee, too, by a letter to the chairman. What is your response to that concern?

Mr. HARMON. Well, I would like to make clear that from the Commission's viewpoint, we have never sought broad scale authority to conduct all litigation in which the Commission might have some interest. The Commission is simply not a law enforcement agency and has no——

Senator LAXALT. If I may, before you hop over that, is it contemplated at all within your existing powers that you would conduct any litigation?

Judge KAUFMAN. It is contemplated apparently in the House bill that only with respect to where a witness does not comply with a subpena and——

Senator LAXALT. This would be essentially an internal matter, then, Judge, would it not?

Judge KAUFMAN. That is right. And issuing a writ of habeas corpus ad testificoundum. Frankly, I think this can be worked out

with the Department of Justice. I do not see any great problem at all.

Senator LAXALT. Such a procedure, I would think, you would be able to sit down and work out.

Judge KAUFMAN. I, frankly, do not want the power to litigate. We do not have a large enough staff. If we are going to be busy questioning witnesses and investigating, you know, Senator, how long a contempt proceeding takes.

Senator LAXALT. Yes.

Mr. HARMON. Our concern, if I could point out, Senator Laxalt, is to be able to permit the Commission to act decisively. We have an awful lot to do in a very short period of time. And that—our concern is purely a practical one. The Department's concern is a matter of policy in general; we are discussing the matter with the Department and I think details are beginning to be worked out at this point.

Senator LAXALT. I think it is essential that you attempt to work something out because when this eventually comes up, the members of the full committee are going to be greatly concerned about it if there are continuing reservations raised by the Department. That is the nature of the beast around here.

Judge KAUFMAN. As I understand it, it really gets down to the one question of litigating authority. They have the manpower, the wherewithall and U.S. attorneys all over the country. We may be holding a hearing somewhere out west and we may need quick action. I think this is what concerns Jim Harmon now. But I should think we could work that out with the Department of Justice to have them give us quick action and be our litigating attorneys because actually, as a practical matter, we do not have the manpower. I happen to know as a judge what is involved in a contempt proceeding. And then there is the possibility of an appeal, and so forth.

And so I am not jealous about that. The only thing that worries me is that the action shall be prompt. That is the only thing and that has to be worked out with the Department. When they are advised that a witness is balky and that we want them to go forward, we must be assured that it will be done promptly.

Senator GRASSLEY. In all this discussion that has been going on on Department involvement, you have not sensed any desire of anybody within the Department to frustrate the goals set for your Commission?

Mr. HARMON. No, we have not. It has been purely a matter of policies from our viewpoint; that is the Department's policy that is.

Judge KAUFMAN. And I may say, Senator, it is only fair at this point to note that practically all my communications have been with the Attorney General. And he has been a firm supporter of the Commission. After all, I think it originated jointly with him and the President. As a matter of fact, the President said in his statement that the Attorney General had been one of the prime movers for the Commission. He has been most supportive.

Senator LAXALT. Well, you know, promptness by any administration is almost a contradiction in terms around here. And your biggest challenge, I think, within the Department is to fix responsibility, to get somebody to whom your people can go and make sure

that prompt action is going to occur, because if it gets down in the bowels of that bureaucracy, forget it. If it gets into an extended decisionmaking process, forget it. We experience that by the day around here and I think that is going to be your prime responsibility. That person will have the authority to deal directly with this Commission. Then and only then I think you are going to get any kind of the prompt action that I think you need and desire.

Judge KAUFMAN. Well, that is very helpful. I hope the representatives of the Department who are in this room listen to you.

Senator LAXALT. The problems around here are mainly structural.

Judge KAUFMAN. We judges refer to it as bureaucracy because we have been insulated from it in the judicial branch.

Senator LAXALT. You are going to get a very, if you will excuse the expression, liberal education in that respect.

Judge KAUFMAN. I have had too much of it already. I have had a postgraduate course and I am going for my doctorate on it.

Senator LAXALT. May I ask one additional question? In connection with the issuance of subpenas and where you eventually want to go, is it contemplated that the members of the Commission will be consulted or will they vote? What is the decisionmaking process on a subpena: is it going to be issued purely upon your recommendation to the judge, and he would have the sole authority? How is that all going?

Mr. HARMON. There are several ways that a subpena could be issued under the House version. One of them is by me, upon the approval of the chairman; that would be the general way. We are in the process of developing rules or procedure within the Commission itself to handle this question as well as ways in which witnesses should be dealt with before the Commission.

I would say that that would be the way in almost all cases that subpenas would be handled within the Commission.

Senator LAXALT. That would probably be the most practical. It is not contemplated, then, that in matters of subpena issuance that that will be addressed by the full Commission, but only by the chairman. Is that true?

Judge KAUFMAN. I would think that would be the most practical thing, although I do not relish having to pass on every subpena. But to get 19 people who are scattered all over the United States to approve something is an unwieldy, impractical way to operate.

Senator LAXALT. I suppose there will be some measure of protection before you get into some general areas. Certainly there will be consultation with the full members of the Commission before you embark on something. Do you fellows not contemplate that?

Mr. HARMON. Yes, sir. The chairman and I talk every day, and Judge Kaufman is well aware of what we are doing in some detail. There are subgroups of the Commission assigned to oversee and to advise us on very specific projects that the Commission would like to undertake.

I could see that in those instances where specific commissioners are more closely involved in a specific area of work, that they would be much more closely involved and consulted on the issuance of particular subpenas.

Judge KAUFMAN. May I just say, by way of my own defense, that I am advised of some of the things, if not most of the things, but that may be my own fault because I am still engaged in sitting.

But there is no problem between the Commission and the staff. As a matter of fact, these gentlemen are in communication with other commissioners right along. Am I right about that?

Mr. HARMON. Yes, Judge.

Judge KAUFMAN. And they call them around the country and these people feel they have a direct line to the Commission offices and do not hesitate to call the staff members

Mr. HARMON. They also have expertise, which is extremely important to us. We do not claim on the staff to have all of the expertise necessary to do the job. The expertise on the Commission is obvious and it is something that we have taken advantage of many times.

Senator LAXALT. You have some real pros on there, no doubt, in all these given areas.

One last question, Judge: Have you thought about leaks?

Judge KAUFMAN. Have I thought about leaks?

PROBLEM OF LEAKS

Senator LAXALT. A rather persistent Washington problem because obviously if you do not get a leak-proof outfit here, has the potential of doing enormous damage to innocent people.

Judge KAUFMAN. I have not only thought of it, but I have been subjected to it, and it is a new experience for me, because, after all, we are protected by our black robes.

Senator LAXALT. By what?

Judge KAUFMAN. Our black robes.

Senator LAXALT. Yes.

Judge KAUFMAN. On the bench and we do not understand that business. And I will be candid. I have complained to the Attorney General about it, and he, as usual, has been very cooperative and said if I only could find out where those leaks come from—he says that it is a constant problem. So when we are dealing with an area concerning people's lives and their reputations, it is entirely different from dealing with a question that may be serious but does not have the consequences that a leak here can have.

Mr. SMITH. Senator Laxalt, if I may, it is clear that as a practical matter we cannot prevent leaks any more than any other component of this Government can. We can, however, seek and support language that would make leaks illegal or unlawful.

The House version of this measure contains such a provision for title III materal now, quite explicitly. We have discussed with staff and fully support language which would make it clear in the Senate version of this resolution that there are very explicit strictures on the use and disclosure of information obtained in the course of the Commissioners 'and staff's performance of their official duties.

Senator LAXALT. Well, you are mindful of it, obviously, and it is probably going to present one of your more niggling problems in the operation of the thing. But it is a problem we have all over town. You know, it does not work all that well in the White House.

Judge KAUFMAN. I take it you have it in the Senate, do you not?

Senator LAXALT. Yes, we have a few in the Senate here, too. It is a constant problem.

I thank the chairman. I thank the witnesses.

Judge KAUFMAN. Thank you.

Senator GRASSLEY. Thank you, Senator Laxalt. I would like to say, too, that I had word from Senator Denton's office that he is going to submit some questions in writing, that he would appreciate response to, and I think that normally we give 15 days, but I presume since there might be consideration of this bill sooner than that period of time, that maybe if you could get it done in just a few days it would be better for the——

Judge KAUFMAN. If we could get those questions promptly, we will give you a prompt answer, because, as I said, time is of the essence.

Senator LAXALT. We will have some as well, just a few.

Senator GRASSLEY. We will keep the record open for a week for that purpose.[1]

Should a party subject to a subpena have the right to challenge the validity of the subpena in Federal court and what basis for a challenge would it have if any single member of the Commission could issue a subpena for whatever reason?

Mr. HARMON. Senator Grassley, as we have discussed with the staff, we fully support the application of safeguards found in the Federal Rules of Civil Procedure, specifically rules 26(c), 45(b), and provisions of rule 81. In other words, those are the grounds under which a subpena could be challenged and litigated in the courts.

Senator GRASSLEY. Should third party records be subject to Commission subpenas? That is, records not in the possession of the subject of the investigation, without notice to the subject of investigation?

Mr. HARMON. We think, Senator Grassley, that there are reasons why certain aspects of the Commission's work should be done in confidence. In light of the financial aspects of our mandate, we need exemption under the Right to Financial Privacy Act exemption provided to law enforcement.

However, we do not seek to have court-ordered delays in notifying customers extended beyond the life of the Commission itself.

Senator GRASSLEY. And in regard to the Privacy Act and its applicability to the Commission and its investigators, should the Commission be held to the same rules as Government investigators in light of its unique function and in the Privacy Act's requirements regarding notation of an investigation and notice to the subject of an investigation?

Mr. HARMON. We think that this issue, sir, could be dealt with adequately in section 6(a)(1) of the House version. We are afforded law enforcement status under the Privacy Act and no more than that for the period of the life of the Commission. We think that would handle that issue.

Senator GRASSLEY. Of course, a concern has been additionally raised that some members of the Commission may use their personal or I should say private staffs to do some of the leg work of

[1] Responses to questions can be found on page 30.

the Commission. Since they are not Commissioners or staff members and also are not employees of the Government, they are not subject to Federal laws barring the disclosure of information they learn in their work for Commissioners.

Should the personal, private staff of a Commission member do any work of the Commission?

Mr. HARMON. If I could ask, Senator, Rod Smith to answer that question.

Mr. SMITH. Senator Grassley, this is one point that the Commission intends to address in the internal rules and regulations for its own conduct that would have been promulgated already. The Commission has been eager to do so since its founding; however, for the reasons that Judge Kaufman outlined earlier, the Commission has been severely limited in its ability to meet in executive session, even for the purpose of promulgating such rules.

However, as we have indicated to staff, we will pursue and promote regulations for the Commission for its own conduct that will sharply define and delimit those people who are considered staff for the purposes of use and disclosure of confidential information. That is an extremely important consideration in our work.

Senator GRASSLEY. Under the currently envisioned structure, can the Commission make decisions of policy based only on a majority vote or can it be done by any one member of the Commission?

Mr. HARMON. That is another issue that we would like to deal with within the Commission's rules of procedure, and again, as Rod Smith has said, we think that congressional sanction would be important for promulgating those rules. But that is something that we would address at that time.

Senator GRASSLEY. Several months of your Commission's 2-year life have already expired without the Commission having the authority that you are here to ask for and that you feel you need.

Should the Commission's life be extended to some date beyond the current 2-year date, and if so, what sort of a date would you recommend?

Mr. HARMON. Well, we would suggest and support that a reasonable limit, maybe 2 years from the date of passage of any legislation by the Senate, that there be a 2-year limit on powers granted with a provision for reauthorization, if for one reason or another the life of the Commission should be extended.

Senator GRASSLEY. Are you willing to issue a preliminary report at some point prior to the expiration date of the Commission's authority?

Mr. HARMON. If that would be requested of us in advance of or in connection with proposed legislation to extend the Commission's powers, we would be prepared to do that.

Judge KAUFMAN. I might say, the answer to that from the Commission is yes. I would like to issue an interim report as soon as we think we have something to report, and that would depend upon going forward with some hearings and subpoenas. In other words, I do not think we ought to wait until the expiration of the Commission and issue only one report.

Senator GRASSLEY. How is your feeling on whether or not the Commission staff should have the power to conduct public hearings?

Judge KAUFMAN. The Commission staff should not have the power to conduct public hearings. But they should have the power to investigate and question witnesses.

Senator GRASSLEY. Senator Laxalt discussed a little bit what I think will be my last question. But I would like to ask it very directly. What recourse would an innocent person defamed by the Commission have?

Or maybe "defamed by the Commission" are not the right words, but as a result of the Commission conducting its business?

Judge KAUFMAN. Well, I hope we will never come to that path, but I do think you ought to consider giving members of the Commission immunity, because they are engaged in a very difficult area, and lawsuits can be used to harass them. Since the life of the Commission is limited, we cannot tie up the Commission with litigation. It would be disruptive. And so I do wish—I am glad you have raised that. I think it should be considered for staff as well as the Commission members. We are all serving—certainly, the Commission members are serving without compensation. They do not need litigation in addition.

Senator GRASSLEY. You addressed the point from the standpoint of the individual Commissioners. But what about a person who has been hurt as a result of the Commission's work? What sort of recourse should they have?

Judge KAUFMAN. You have this occurring constantly in Government. What recourse does an individual have now who appears before a Senate committee and is unfortunately damaged, his reputation is damaged? What is his recourse? What is the recourse against some overzealous law enforcement official?

Senator GRASSLEY. I guess I would have to venture a view as a nonlawyer, but my recollection is not a whole lot in some instances.

Judge KAUFMAN. Right.

Senator GRASSLEY. I cannot say never, but so really what you are saying in answer to my question, then, that you would see a person's involvement with the Commission and recourse to any harm being that similar to that same individual coming before any agency of the Federal Government or any committee of the Congress, right?

Judge KAUFMAN. That is quite right, the same recourse he has now, which is not very much.

Senator GRASSLEY. As I said, that was my last question. I would also like to suggest that I know that Senator Mathias of Maryland would also be submitting questions to you, that he could—would appreciate responses in writing.

And I see that my friend, Senator Biden, who happens to be the ranking minority member of this committee is here, and I can defer to you now.

Could I ask, for the benefit of myself, because I have to go up to the Labor Committee to help form a quorum up there, could you close the meeting when your questioning is done?

Senator BIDEN [presiding]. I will. Thank you, Mr. Chairman. And I will not trespass on your time too long, gentlemen, but I do have a few questions that I would like to raise that have not been raised. Many have. I apologize for being late.

Judge Kaufman, I would like to begin with you, if I may. I raised some budgetary concerns 2 years ago when the administration first proposed the idea of an organized crime commission. My concerns had nothing to do with the concept of the Commission, which could do an indepth review followed by recommendations as to how we can improve the fight against organized crime.

However, at the time, the administration proposed some law enforcement budget cuts that I felt needed to be protected and I do not believe the Commission or any commission for that matter that would cost in the neighborhood of $5 million over 3 years was appropriate while agencies who are carrying out the battle against organized crime on a day-to-day basis did not have the proper tools or personnel to carry out the fight. In fact, I still do not think we have sufficiently supported the efforts out there.

Anyway, let me ask you a couple of questions in light of what you probably are aware, my original criticism related to how we could be cutting the budget and spending money on another commission. And the two things I would like to ask you: At the two hearings you held so far, did you get pretty wide participation from the Commission membership?

Judge KAUFMAN. Well, what do you mean by wide participation?

Senator BIDEN. Did they all show up?

Judge KAUFMAN. Well, with the exception of the two members of Congress who are on the Commission, they showed up at the first one, I will say that. That was held in Washington, D.C. They did not show up in New York. Senator, Justice Stewart showed up at the first one and did not show up at the second one. But other than that, I would say that all the other Commissioners were present. Would you not say that, Jim?

Mr. HARMON. Yes, that is correct, Judge Kaufman.

Senator BIDEN. Have you established subcommittees to handle what most of us believe are the fairly diverse subjects that fall within the umbrella of organized crime?

Judge KAUFMAN. We have.

Senator BIDEN. And could you tell me for the record how many of those subcommittees there are, if you know, any of you?

Judge KAUFMAN. I would say roughly—roughly, I would say about 10, would you not?

Mr. HARMON. Yes, Judge.

Judge KAUFMAN. I would say about 10, Senator.

Senator BIDEN. About 10.

Judge KAUFMAN. Yes. The idea was to involve every Commissioner in the work of the Commission and divide it up.

Senator BIDEN. That makes sense. What do you estimate the first year's expenditures are likely to be and do you believe that you will use the full $5 million appropriated for the life of the Commission?

Judge KAUFMAN. I am going to pass that right on to our Director.

Senator BIDEN. That is a judicial decision.

Judge KAUFMAN. We do not deal with budgets, et cetera, and we did not have any input in connection with that original $5 million, so I think Jim and Rod would know more about it than I do.

Mr. HARMON. I would say what has been happening since January is that we have been increasing the size of the staff. I would say the first year's expenditures will focus largely on purchase of equipment, salaries and it will approximate about $1.8 to $2.3 million for the first year.

Senator BIDEN. And you do not think that will be a yearly expenditure necessarily. That is startup that is the reason for that?

Mr. HARMON. Yes. That does not include costs such as special consultants on behalf of the Commission and it does not include the regular conduct of public hearings, which we will do in the future. So the costs should increase as time goes on.

Senator BIDEN. Judge, what do you anticipate—let me put it another way. What is your most optimistic expectation that you would like to see result from this Commission? You are a man of great substance. You take things seriously. You would not undertake this just for the exercise. What do you believe can be accomplished?

Judge KAUFMAN. I think I covered that earlier and I will try to repeat it. Of course, something is always lost in repetition.

About 1960 or 1961 I tried the *Appalachian* case. I saw organized crime in the raw. That was a 3-month trial, and I learned something about the nature of these individuals. I learned something else, which I said earlier. No matter what law enforcement does—and this is not intended as criticism of law enforcement because they are dedicated people—it goes on. You put the top people in prison and it goes on.

I compared it with the medical metaphor of a cancer. You do surgery. You use chemotherapy. It may go into remission for a little while, but nevertheless it continues on. Thus, it may be wishful thinking, but I think it can be achieved. I was heartened to see a splendid article by Senator Hatch in the New York Times op-ed page on getting to the source of narcotics and what is going on in the Senate in connection with that.

I have some ideas on legislation. How do you confiscate funds properly and constitutionally? That is a terribly important question. Jail, apparently, is not the answer. Of course, you are not going to give them a medal. They have to go to jail. But you have to do other things. You have to make it unprofitable for them to engage in this. There is a reason why it has been in existence all your life, all my life, no matter what law enforcement does, and they have done a splendid job. Nobody can criticize them for it.

It goes on; therefore, it is a hard task. We have to find out why, what do you do about putting an end to this type of activity.

Senator BIDEN. One of my concerns, Judge, to tell it to you very frankly and bluntly, is that I have only been here for four Presidents. You have experienced more than I have in terms of dealing with Presidents. But I have only been here for four and whether they are Democrats or Republicans, I always get a little bit queasy when they decide the answer to a problem which is so pernicious as organized crime and international drug trafficking and the coordination between the two is to establish a commission.

Every President has a desire to reinvent the wheel. I think they have a stamp made when they arrive at their desk, whether it is a Democrat or Republican; on the stamp it says "Not Made In This

Administration." And that stamp goes on whatever is in front of them.

Judge, I think this President has done more to focus on the crime question, which heartens me greatly, as a Democrat who has been taking heat from my side on this subject for the last dozen years. You know up until now—many have said that it is incompatible to think that you could understand that there is a Bill of Rights and the need for civil liberty and still want to do something about crime.

That is why I am concerned about the Commission. My worry is that the Commission's activities may be an excuse to delay some of the significant things we know must be done now. Some may say not to move forward until the Commission completes their report. We have already passed the most comprehensive anticrime legislation that has come out of this body in 15 years.

For example, one of the areas is forfeiture of assets. We rewrote the forfeiture law. I believe it is constitutional. I think it allows under our Constitution the confiscation of assets making your job as a judge and the prosecutor's job as a prosecutor much easier.

We have done many of these things and yet we have still not seen the results.

Judge KAUFMAN. Somebody plagiarized my idea there.

Senator BIDEN. Well, we did, Judge. As a matter of fact, we took your idea and I am proud to say you were the source of a good deal of my plagiarism. And I make no bones about it. There are a number of other ideas that we have plagiarized, one of which I hope you all will look at in the process of this effort.

You are going to have to determine whether or not the coordination in the fight against organized crime in fact exists. I argue very strongly that there is a need for a Cabinet level officer to coordinate international drug interdiction and enforcement efforts.

I think we will eventually come to that, but it is a hard decision for a President to make, to bang bureaucratic heads together.

But I just would be presumptuous enough to forward to the Commission just for your perusal, some of the crime and drug legislation Senator Thurmond and I have passed out of the Senate.

I sincerely hope you do not spend the next 3 years delaying much of what we know we need now and we should do now on the grounds we are going to wait until you have finished your work. It reminds me, if I may suggest to you, Judge, about arms control. When I first got here to the U.S. Senate 12 years ago as a 29-year-old Senator, I thought, the only thing we have to do is elect brighter women and men to office and then look for comprehensive approaches. I was disappointed to find out there are an awful lot of bright women and men here already. And that really disturbed me because if they were so bright, why had they not solved the problems.

And the second thing that I thought about was, you know, we need comprehensive solutions and arms control was one of those areas. But I figured out technology outstrips our ability to negotiate. It moves faster than we move. So I have become one of those step by step guys, take what you can now and move toward an overall solution, hopefully within the scope of an overall game plan.

I must say very bluntly, not necessarily for you to comment on, although I welcome any comments, I have arrived at a similar conclusion with regard to organized crime. If we wait, as some in the last administration and some in this administration are suggesting until we have an overall comprehensive approach and we sit and wait for that, we are going to find that we have found that organized crime has moved further beyond our reach.

Judge KAUFMAN. I cannot take issue with anything you say, Senator, because unfortunately I suppose I was endowed with the same impatience as you. And accordingly, I was persuaded to take a second full time job at the same salary as that of a Federal judge. I probably should have been committed before I took it on, but nevertheless, I felt something had to be done.

First, let me correct this: the life of this Commission expires March 1986. But the President has the power to extend it. Whether I would stay on or not is another question. But he has the power to extend it.

So we do not have 3 years. We have spent close to 1 year, remember, gearing up from nothing. Not a soul was employed, not even a secretary, no one. It is not like a Cabinet officer going into an established agency. We had nothing. The only thing we had immediately was Archie Cox's old offices. I wonder if there was something ominous about that.

Senator BIDEN. Be careful on Saturday nights.

Judge KAUFMAN. Yes. Every Saturday night I am very apprehensive. Jim has just handed me a note which answers some of what you said and I had discussed this previously. We have proposed that there be interim reports, not only a final report, but also interim reports. I have been saying that right along. And so it is in these interim reports that we can identify problems that we see and answer with some action and not wait until the very end.

Senator BIDEN. Well, the thing I am most hopeful about from your efforts is the independence of the effort, independent of the Congress, independent of the Justice Department, to be able to go out and come back in as you have a reputation for doing, judge, and saying exactly what you think, which is a dangerous reputation to have, I acknowledge, but one that is extremely valuable to us.

We stand ready on this committee, I as the ranking member of the Democrats, and who knows, maybe as strange a thing could happen in 1984 as happened in 1980 and I might be chairman of the Judiciary Committee.

Regardless, in whichever capacity, I can assure you that I, as the ranking Democrat, and I know Senator Thurmond as the chairman, stand ready to be available to you in any way that you may find helpful. I wish you well.

I do not mean to imply any criticism of the Commission. I think that it is a worthwhile effort as long as we politicians understand that eventually we have to step up to the ball on these things and not foist them off. And I am not suggesting that is necessarily the intent.

But like I said, I have been here for four Presidents. I have watched other commissions. And I am mildly skeptical, not of your work, but the post work product.

In conclusion, let me point out, there was a little commission set up when this President took office. And a very distinguished former Attorney General and Federal judge headed that Commission. It made very significant recommendations, and many of the most important were rejected.

I look forward to your interim reports and your final report and I can assure you if it packs the substance that your decisions do, Judge, it will be taken very seriously here even if it costs money, which I cannot believe it will not.

Judge KAUFMAN. Senator, may I just say that of course we are very grateful to you for that statement because we do need all the encouragement we can get. We have had a hard time getting started and it is generally known that it has been very difficult. I have been most fortunate, I must say, in being able to recruit Jim Harmon as our Executive Director. It was a tough search. I think it is perfectly appropriate to say I finally called on Bob Morgenthau in New York who recommended Jim. We have known him for many, many years.

And then Jim recommended Rodney Smith, who has an outstanding record up here with the Senate, and so forth. They have been recruiting a fine staff. I want to put you at ease on that.

Our staff is first rate. We have problems. We have a lot of problems. It is good to know that we have someplace to go.

Senator BIDEN. Well, you do, and I think that view is shared by Democrats and Republicans alike.

Judge KAUFMAN. That is very helpful. Thank you very much, Senator.

Senator BIDEN. Thank you very much, gentlemen. The hearing is adjourned.

[Whereupon, at 12:24 p.m., the hearing was adjourned.]

[The following material was subsequently supplied for the record:]

35-271 O—84——3

PRESIDENT'S COMMISSION ON ORGANIZED CRIME

Suite 700
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(202) 633-5589/5652 Washington, D.C. 20005

Chairman:
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Honorable Peter W. Rodino, Jr.
Charles H. Rogovin
Barbara A. Rowan
Frances A. Sclafani
Samuel K. Skinner
Honorable Potter Stewart
Honorable Strom Thurmond

May 16, 1984

The Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20530

Dear Senator Thurmond:

At the hearing that the Committee held on May 9 concerning S.J. Res. 233, which would confer various powers on the President's Commission on Organized Crime, Senator Grassley, who served as Acting Chairman at the hearing, stated that the hearing record would remain open for one week. Subsequently, Senator Mathias submitted a list of five questions addressed to the Chairman of the President's Commission, Judge Irving R. Kaufman. I am sending herewith the written responses of Judge Kaufman to those questions, for inclusion in the hearing record.

Sincerely,

James D. Harmon, Jr.
Executive Director

Enclosure

cc: The Honorable Charles McC. Mathias, Jr.

RESPONSES OF JUDGE IRVING R. KAUFMAN TO QUESTIONS POSED BY SENATOR CHARLES McC. MATHIAS, JR.

Question 1. I share the concern you expressed about leaks of information from the investigations conducted by the Commission. What steps have you taken, or do you plan to take, to minimize the possibilities of harmful leaks? Specifically, have you considered requiring members, staff, and consultants to sign legally enforceable agreements forbidding disclosure (unless authorized by the Commission) of sensitive information learned during the course of the investigation? Have you considered including non-disclosure provisions in the Commission's internal rules and procedures? If either of these routes have been considered, will you furnish to the Committee the texts of non-disclosure agreements or regulations once they are put in final form?

Answer. The President's Commission intends to include in its rules of procedure provisions that would govern the handling of classified or sensitive information by Commission members, staff, and consultants. Although the Commission must meet to adopt such rules, I have instructed the Commission's staff to review provisions of this type that have been adopted by various investigative bodies and Congressional committees, including the Senate Select Committee To Study Law Enforcement Undercover Activities of Components of the Department of Justice. Once the Commission adopts rules of procedure, we would be pleased to provide the Committee with a copy. In addition, as I indicated in my testimony before the Senate Committee on the Judiciary, to remove any possible uncertainty concerning this issue, we would welcome explicit legislative authority to adopt rules.

Question 2. The House-passed resolution provides for the Commission to be considered a civil or criminal law enforcement activity for purposes of receiving information under 5 U.S.C. 552a(b)(7). To what extent should other provisions of the Privacy Act apply to the Commission? For example, should there be civil or criminal penalties for unauthorized disclosure of information, as provided for in 5 U.S.C. 522a(g) and (i)? Should the provisions of 5 U.S.C. 522a(c)(3), relieving agencies of the obligation to make available to data subjects accountings of disclosures to law enforcement agencies, apply to disclosure to the Commission? If so, should this exemption continue in effect beyond the life of the Commission?

Answer. The President's Commission would not oppose the inclusion in S.J. Res. 233 of language that would impose sanctions on Commission members, staff, or consultants who obtain or disclose information in any manner prohibited by law. Section 6(c) of H.J. Res. 548 already contains prohibitions on unauthorized receipt or disclosure of Title III information.

I believe the provisions of section (c)(3) of the Privacy Act of 1974 (5 U.S.C. 552a(c)(3)) should apply to disclosures made by Federal agencies to the Commission. If section (c)(3) is not made applicable, each Federal law enforcement agency possessing information relevant to a Commission investigation will be required, whenever it discloses records containing such information to the Commission, to reveal to every individual named in the records disclosed (upon request by that individual) the date, nature, and purpose of that disclosure. Such accountings could reveal not only confidential information concerning Commission investigations, but also information concerning the existence and extent of confidential investigations being conducted by Federal law enforcement authorities. If the President's Commission is to receive the same kinds of information that Federal law enforcement agencies can and do receive, such information and the fact of its disclosure should be attended by the same safeguards.

I also believe that the application of the provisions of section (c)(3) to the President's Commission should not be limited in a manner that would require Federal law enforcement agencies to make accountings of disclosures to the Commission once it has ceased operations. Even after the Commission has completed its work, there may still be an interest in keeping confidential the fact that certain investigations relevant to its mandate were undertaken but not made public. Moreover, the law enforcement agencies that made information available to the Commission may have a continuing concern in maintaining the confidentiality of information disclosed to the Commission. Since the Privacy Act does not require an agency to make accountings after another Federal law enforcement agency to which its records have been disclosed closes the investigation in question, I believe that Federal law enforcement agencies generally should not be required to make such accountings available merely because the Commission has ceased its operations. The proposed provision would protect precisely the same continuing interests to which existing law now applies.

Question 3. What policies do you propose to establish concerning access of "informal staff" to Commission information? (I refer here to persons who are not paid staff members of the Commission, nor staff detailed from other agencies, but the staff available to members of the Commission in their personal capacities, e.g., law firm staff for members who are lawyers, congressional staff for members who are members of congress, etc.)?

Answer. At the next closed meeting of the Commission, I intend to address the issue of the use of personal staff by members of the Commission. In particular, I will propose that the Commission adopt regulations that will sharply limit the number of persons whom a member may use as his or her personal staff in Commission matters, and clearly delineate the scope and circumstances of access to sensitive materials by such persons. Of course, Commissioners are legally restricted in their ability to disclose classified information to members of their personal staff unless such persons have received a security clearance, and any regulations we adopt would reflect this. We will, of course, take steps to assure that all legitimate concerns governing the dissemination of confidential materials are addressed.

Question 4. You indicated during your testimony that various subgroups or subcommittees of the Commission had been created to oversee particular investigations. Do you think these subcommittees should be able to have authority to issue subpoenas if authorized to do so by the Commission?

Answer. Because the authority to issue subpoenas is one of the more important powers that the President's Commission seeks, I believe the Commission should not lightly authorize individual members or subgroups of the Commission to exercise that power. At the same time, practical considerations militate against a requirement that the full Commission must vote to issue a subpoena. Accordingly, I expect that the Commission will designate one of its members to authorize the Executive Director to sign subpoenas on behalf of the Commission in the event that the Chairman is unavailable. These subpoenas would be issued only after consultation with the designated member(s) of the Commission concerning the need for that subpoena and the relevance of the information sought to the Commission's investigation. The consultation could be conducted by telephone or in person, as circumstances permit, but in all cases will be duly noted.

Question 5. If the Commission subpoenas records in the control of a third party, (i.e., bank records or medical records) should the individual who is the subject matter of the records be notified of the subpoena? Should he be given an opportunity to contest the subpoena? If you do not believe this notification or opportunity to contest should be granted, please explain in detail the reasons?

Answer. Under section 6(a)(2) of H.J. Res. 548, the Commission would be deemed a "Government authority," and its investigations would be considered "law enforcement inquiries," for the purposes of the Right to Financial Privacy Act (RFPA) (12 U.S.C. §§ 3401-3422). The RFPA would require the Commission to provide notice, in a form prescribed by the RFPA, to a customer of a financial institution whenever the Commission subpoenas that customer's financial records. The only exceptions to this requirement are the temporary delay of the notice that a Federal court may grant upon a showing of certain exigent circumstances, and the exemption for limited categories of information that any Government authority may obtain. The RFPA would also permit the customer, upon receipt of the notice, to challenge the Commission's efforts to obtain his records.

Since the Commission seeks no greater authority to obtain financial records than Federal law enforcement agencies now have under the RFPA, it would support the inclusion in S.J. Res. 233 of the language of section 6(a)(2) of H.J. Res. 548. The members of the Commission, however, do not believe that all individuals who would be named in records in the control of a third party should have a general right, if the Commission subpoenas those records, either to notice of or an opportunity to contest that subpoena. To the best of my knowledge, neither the Constitution of the United States, nor any Federal rule or statute (other than the RFPA), nor any decision of the Supreme Court has ever recognized that third parties have a general right to notice of, or an opportunity to contest, subpoenas issued in aid of investigations by Federal agencies or instrumentalities. *See, e.g., United States* v. *Miller,* 425 U.S. 435, 443 (1976); *Hannah* v. *Larche,* 363 U.S. 420, 449-51 (1960). Moreover, to confer such a general right on all persons named in records subpoenaed by the Commission would provide members of organized criminal groups with a potent weapon for obstructing the Commission's investigation. As the Solicitor General recently observed, such a requirement:

"Will provide 'targets' with a road map of the investigation and a status report on its progress and direction. It will thereby substantially increase a 'target's' opportunities to destroy documents, tailor testimony, [and] fabricate defenses. . . . Further-

more, 'targets' might bribe witnesses or threaten them with physical or economic retaliation in an effort to persuade them not to testify, to mold their testimony, or to commit perjury. . . . Witnesses who are employees or associates of those under investigation are particularly vulnerable to such coercion. . . . And confidential informants, whose cooperation with the government is often not known to the 'target,' will be reluctant to come forward and testify if they know that their participation will be revealed to the 'target.'

"Notice also will encourage needless litigation by arming 'targets' with a tool to delay investigations and subsequent law enforcement proceedings. 'Targets' might encourage witnesses not to comply with legitimate subpoenas, thereby forcing the agency to seek judicial enforcement in many instances in which it would not otherwise be necessary. Even if a witness desires to comply voluntarily with a subpoena, 'targets' armed with advance notice can be expected to file frivolous actions to delay compliance. In addition, . . . 'targets' may seek to intervene in numerous subpoena enforcement proceedings for purposes of delay. If intervention is allowed, 'targets' could prolong subpoena enforcement proceedings by requesting discovery and evidentiary hearings. . . ."

"Even if a 'target's challenges to third-party subpoenas are ultimately unsuccessful, he may nevertheless achieve his broader objective of derailing the Commission's investigation. . . .

"Moreover, if the Commission were required to respond to such challenges, it 'would be diverted from [its] legitimate duties and would be plagued by the injection of collateral issues that would make the investigation interminable.' " Brief for the Petitioners at 27-31, *Securities and Exchange Commission* v. *Jerry T. O'Brien, Inc.* (U.S. No. 83-751) (citations and footnotes omitted). *See Pepsi Co., Inc.* v. *SEC, 563 F. Supp. 828 (S.D.N.Y. 1983).*

I submit that the life of this Commission is limited, and we must do all within our power to avoid litigation. Litigation would serve to delay the Commission in complying with the President's mandate and order.

PRESIDENT'S COMMISSION ON ORGANIZED CRIME

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May 16, 1984

The Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20530

Dear Senator Thurmond:

At the hearing that the Committee held on May 9 concerning S.J. Res. 233, which would confer various powers on the President's Commission on Organized Crime, Senator Grassley, who served as Acting Chairman at the hearing, stated that the hearing record would remain open for one week. Subsequently, Senator Denton submitted a list of seven questions addressed to the Chairman of the President's Commission, Judge Irving R. Kaufman. I am sending herewith the written responses of Judge Kaufman to those questions, for inclusion in the hearing record.

Sincerely,

James D. Harmon, Jr.
Executive Director

Enclosure

cc: The Honorable Jeremiah Denton

RESPONSES OF JUDGE IRVING R. KAUFMAN TO QUESTIONS POSED BY SENATOR JEREMIAH DENTON

Question 1. Judge Kaufman, by Executive Order 12435 President Reagan created this advisory committee on organized crime. The stated purpose of the Commission is to make a full and complete national and region-by-region analysis of organized crime; define the nature of traditional organized crime as well as emerging organized crime groups, the sources and amounts of organized crime's income and the uses to which organized crime puts its income; develop in-depth information on the participants in organized crime networks; and evaluate Federal laws pertinent to the effort to combat organized crime. Furthermore, the Commission shall advise the President and the Attorney General with respect to its findings and actions which can be undertaken to improve law enforcement efforts directed against organized crime, and make recommendations concerning appropriate administrative and legislative improvements and improvements in the administration of justice.

In my view the Executive Order is calling for a commission to produce the definitive scholarly analysis of the problem of organized crime by incorporating existing data. However, there are those who believe that the Commission is some sort of super investigatory entity charged with a wide range of responsibilities.

Judge Kaufman, in your view what is the mandate of the Commission and what are the parameters of that mandate?

Answer. My view of the Commission's mandate stems directly from President Reagan's remarks in the Rose Garden ceremony at which he announced the establishment of the Commission. The President noted:

"Few weapons against organized crime have proven more effective or more important to law enforcement than the investigations of the Kefauver committee in the early fifties, the labor racketeering hearings of the McClellan committee in the mid-fifties, and the testimony of Federal informant, Joseph Valachi before a Senate committee in the 1960's. While some other commissions on crime have been appointed since then, each has been of short duration and had neither the time nor the resources to fully investigate the syndicate and lay out a national program for its elimination.

To conduct the comprehensive investigation requested by the President, and to provide him and the Attorney General with the soundest advice concerning more effective governmental responses to the threat posed by organized crime, this Commission cannot content itself with a mere review of the findings of previous commissions and other fact-finding bodies. It is my hope that this Commission can incorporate into its final report the "definitive scholarly analysis" of organized crime that you suggest. I believe, however, that the President and the Attorney General would be ill-served if we purported to provide either scholarly analysis or policy recommendations that were based solely on data in the public domain. Organized crime has shielded its operations behind a veil of silence and relies upon fear and coercion to prevent disclosure to the public. Accordingly, the most timely and accurate information concerning the nature and scope of organized criminal activity is rarely a matter of record. Indeed, it is precisely for these reasons that the Commission has sought authority to issue subpoenas, to compel testimony, and to obtain access to the contents of electronic surveillances.

In making use of any of the powers that Congress may confer upon the President's Commission, we have no intention of acting as a "super investigatory entity." Unlike some government entities that may seek to perpetuate their existence, the Commission has always accepted the fact that is was established as a temporary investigative and advisory body. It's term expires on July 27, 1985. Moreover, the members of the President's Commission believe that our work can and will complement, rather than conflict with, the work of Federal and state law enforcement agencies.

Question 2. Judge Kaufman, in your April 5, testimony before the House Subcommittee on Crime, you stated that, "The Commission's investigation will not be a superficial overview of organized crime, nor will our hearings merely present information already in the public domain. The commission will be examining the phenomenon of organized crime with a fresh perspective, and it hopes to make a substantial contribution to the national effort against organized crime."

Judge Kaufman, could you explain this new fresh perspective and how it is different from the approaches previously taken by the Justice Department, the FBI, the DEA or other law enforcement agencies?

Answer. My statement before the Subcommittee on Crime of the House of Representatives' Committee on the Judiciary indicating that the Commission would examine the phenomena of organized crime from a "fresh perspective" referred to our

ability to devote the time and resources necessary to investigate, analyze, and expose the activities of organized crime in a thorough and comprehensive manner. The Department of Justice, the FBI, the DEA, and other law enforcement agencies perform a commendable job in investigating and prosecuting individual members of organized criminal groups. They can scarcely afford, however, to dedicate their limited time and resources to a long-term, comprehensive investigation, designed not to produce cases for prosecution, but to propose the enactment of needed laws and formulate new strategies.

In addition, the nature of the criminal process detracts from the ability of law enforcement agencies to educate the public concerning the full range of activities in which organized crime engages. Individual criminal investigations and prosecutions cannot properly be vehicles for public education, since their focus is necessarily limited to specific events in which particular individuals participate. Also, the preeminent importance given in such matters to the rights of the defendants and the interests of fair adjudication limits their educational value.

The mandate of the President's Commission requires us to adopt a different approach from that employed by law enforcement agencies. We are not fundamentally concerned with the activities of specific individuals. Rather, the emphasis of our investigation will be on the operations of organized crime in general, and we will analyze the means through which criminal cartels have been able for decades to consolidate their influence and extend the scope of their activities. The nature of our mission makes the President's Commission uniquely situated to educate the public concerning the threat posed by organized crime.

Moreover, in the competition between law enforcement agencies, no one agency should be expected to determine what changes in laws and procedures would be of the greatest benefit to law enforcement as a whole. We believe that an independent commission that is not involved in the day-to-day struggle against organized crime and does not seek credit for arrests and convictions may be in the best position to review law enforcement's achievements in a neutral and detached manner. Such a commission can also exercise the independent judgment necessary to make recommendations to enable law enforcement authorities to respond even more effectively to organized crime. I should note that we have received the full support of both the Attorney General and the Director of the FBI. Each of these officials appreciates the need for an independent advisory commission on organized crime.

Question 3. Judge Kaufman, on Monday of this week Associate Attorney General D. Lowell Jensen appeared before the Committee and testified in support of a $3.67 billion authorization for FY 1985 for the Department of Justice. During that testimony Mr. Jensen indicated that a portion of that request was earmarked for the continued expansion of the war on organized crime and drug trafficking-including expanding the Organized Crime Drug Enforcement program and the FBI's Organized Crime program.

Previously the Commission on Organized Crime was appropriated some $2 million to carry out the mandate concerning organized crime as called for in Executive Order 12435. Are the American taxpayers being asked to pay twice to accomplish a single objective?

Answer. As I have indicated, I believe that the President's Commission, the Department of Justice's Organized Crime Drug Enforcement program, and the FBI's Organized Crime program are intended to play complementary roles in achieving the long term goal announced by President Reagan in his Rose Garden remarks: "to do all in our power to break apart and cripple the organized criminal syndicates that for too long have been tolerated in America." The Department, the FBI, and other law enforcement agencies have achieved remarkable results through painstaking investigation and diligent prosecution of important members of organized criminal groups, and it is vital that they continue to perform this valuable—and too seldom acknowledged—service to the American people.

As I indicated during my testimony before the Senate Judiciary Committee, however, investigations and prosecutions of individual members of organized criminal groups are not sufficient to disrupt seriously the operations of such groups or to deprive them of their illegally obtained income. These groups seem to continue without disruption despite the convictions of key members. Others stand by and are ready to step into the role of the convicted leaders. This factor, in my judgment, underlies the President's expressed desire to have this Commission conduct a comprehensive investigation of organized crime, establish a program for its elimination, and, through its public hearings and reports, to aid in generating public awareness of the danger presented by criminal cartels.

Question 4. The Congressional Research Service of the Library of Congress prepared a brief on the Commission entitled "The President's Commission on Orga-

nized Crime: A Comparison of Proposed Statutory Powers to Those of Prior Commissions". In reviewing that comparison I am left with the impression that this Commission is seeking more power than has previously been granted to any earlier Commission?

Can you explain the need for these broad powers?

Answer. Although I have not had the benefit of the Congressional Research Service study to which your question refers, the powers that the President's Commission seeks are neither unique nor unprecedented. As the attached memorandum indicates, numerous commissions—including the Warren Commission, the National Advisory Commission on Civil Disorders, the National Commission on the Causes and Prevention of Violence, the Wiretap Commission, and the Gambling Commission—have been empowered to issue subpoenas, to compel testimony in conformity with an individual's Fifth Amendment privilege against self-incrimination, and to seek judicial enforcement of their subpoenas. In addition, several commissions have been authorized to permit members of their staff to administer oaths and affirmations, examine witnesses, and receive evidence. (I should note parenthetically that although the provisions of section 6 of S.J. Res. 233 might be construed to permit the staff to conduct public hearings, the Commission has never sought such power for its staff and would support the adoption of clarifying language.)

Commissions and fact-finding bodies have regularly been granted access to contents of electronic surveillances. The Wiretap Commission, for example, was specifically authorized to close its meetings in order to listen to tapes of illegal wiretaps. Of course, as I emphasized in my statement to the Senate Committee on the Judiciary, we only request access to surveillance materials which have been properly authorized by a court. We do not seek original wiretapping powers. Other bodies, such as the Rockefeller Commission on the CIA, the House Select Committee on Assassinations, and the Senate Permanent Subcommittee on Investigations have been granted access to certain records, tapes, or transcripts of electronic surveillance.

Each of these powers is vital to the work of the President's Commission, because of the difficulties inherent in any investigation of organized crime. As the Senate Report on the Omnibus Crime Control and Safe Streets Act of 1968 noted,

"[v]ictims, complainants, or witnesses are unwilling to testify because of apathy, fear, or self-interest, and the top figures in the rackets are protected by layers of insulation and direct [sic] participation in criminal acts. Information received from paid informants is often unreliable, and a stern code of discipline inhibits the development of informants against organized criminals."

S. Rep. No. 1097, 90th Cong., 2d Sess. (1968), *reprinted in* 1968 U.S. Code Cong. & Ad. News 2112, 2159. Under these circumstances, the President's Commission must be able to issue subpoenas and have them enforced, compel testimony, and obtain access to the wealth of information found in court-authorized electronic surveillance materials if it is to develop "in-depth information about the participants in organized crime networks" and prepare "a full and complete national and region-by-region analysis of organized crime," as required by the President pursuant to Executive Order 12435.

Question. 5. Judge Kaufman, it is my understanding that as of this time you have not signed the normal Classified Information Nondisclosure Agreement Form. Do you intend to sign such a form? If not, why not?

Answer. I intend to sign the Classsified Information Nondisclosure Agreement after I receive the security briefing required by paragraph two of the Agreement. In addition, I am still awaiting clarification from the Department of Justice of certain ambiguous provisions of the Agreement.

Question. 6. Judge Kaufman, as chairman of the Commission you will be functioning as a member of the Executive Branch, while maintaining your active role in the Judiciary. Do you see an inherent conflict of interest or at least a separation of powers question in this arrangement? If so, would you consider taking senior status during the life of the Commission?

Answer. I believe there is no conflict of interest between my service as an active member of the Federal judiciary and my role as Chairman of the President's Commission. Over the years, active Federal and state judges have often served as chairmen of national commissions: for example, Supreme Court Justice Owen Roberts, with the commission that investigated the Japanese attack on Pearl Harbor; Chief Justice Earl Warren, with the commission that investigated the assassination of President Kennedy; and Colorado Supreme Court Justice (now Chief Justice) William H. Erickson, with the National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance. Similarly, active Federal and state judges have often served as members of national commissions: for example, U.S. District Court Judge James B. Parsons, and New York Court of Ap-

peals Associate Judge Charles D. Breitel, with the President's Commission on Law Enforcement and Administration of Justice; U.S. District Court (now U.S. Court of Appeals) Judge A. Leon Higginbotham, with the National Commission on the Causes and Prevention of Violence; and U.S. District Court Judge C. Clyde Atkins, with the National Commission for the Review of Antitrust Laws and Procedures.

Moreover, I would not have accepted the position of Chairman of the Commission if I believed it would be inconsistent with the precepts of the Code of Judicial Conduct, which I participated in drafting as a member of the American Bar Association Special Committee on Standards of Judicial Conduct. Canon 5(G) of the Code clearly permits a judge to accept an appointment to a governmental commission that is concerned with issues of fact or policy relating to the improvement of the law, the legal system, or the administration of justice. This Commission, in my judgment, clearly meets those criteria: Executive Order 12435, which established the Commission, specifically provides that

"[t]he Commission shall advise the President and the Attorney General with respect to its findings and actions which can be undertaken to improve law enforcement efforts directed against organized crime, and make recommendations concerning appropriate administrative and legislative improvements in the administration of justice."

I also believe firmly that my service as Chairman of the President's Commission is wholly consistent with the separation of powers doctrine. The duties of this Commission are purely investigative and, in the main, advisory in nature. Since neither I nor the Commission directs any Federal programs or enforces any substantive laws, my appointment by the President to this Commission did not confer on me the type of Executive Branch authority that would be inconsistent with my status as an active Federal judge, nor do I consider myself to have joined the Executive Branch. As I have indicated, it is important for Presidents to be free to call on members of the Judicial Branch as they have in the past, and in conformance with Canon 5(G) which I assisted in drafting.

Question 7. At this point the Commission is due to terminate on July 28, 1985, with the final report to be filed by March 1, 1986. Do you believe that the Commission can accomplish its mandate by that date or do you expect an automatic extention?

Answer. Pursuant to section 14(a)(2) of the Federal Advisory Committee Act, the President was authorized to establish the Commission on Organized Crime for an initial period that would not exceed two years. Section 14(a)(2) specifically provides that

"[e]ach advisory committee established after [the] effective date [of this Act] shall terminate not later than the expiration of the two-year period beginning on the date of its establishment unless—

"(A) in the case of an advisory committee established by the President . . ., such advisory committee is renewed by the President . . . by appropriate action prior to the end of such period. . . ."

Although I cannot, of course, presume to speak for the President, I believe it was contemplated when the Commission was established that if we made satisfactory progress during the first two years of our investigation, the Commission's tenure would be renewed to permit us to complete our report by March 1, 1986, if the time is needed. The Commission does not assume our mandate will automatically be renewed, since that decision rests with the President. Notwithstanding the delays that inevitably arise in organizing a commission of this type, I am confident that the members and staff will make every effort to meet the deadlines that have been set for us.

COMPARISON OF POWERS GRANTED TO SELECTED NATIONAL AND STATE COMMISSIONS

I. National Commissions

A. Jurisdiction and Subpoena Authority

1. Warren Commission

In the Executive Order that appointed the Commission on the Assassination of President John F. Kennedy (the "Warren Commission"), the Commission was "to ascertain, evaluate and report upon the facts relating to the assassination of the late President John F. Kennedy and the subsequent violent death of the man charged with the assassination." In particular, the Commission was

> to examine the evidence developed by the Federal Bureau of Investigation and any additional evidence that may hereafter come to light or be uncovered by federal or state authorities; to make such further investigation as the Commission finds desirable; to evaluate all the facts and circumstances surrounding such assassination, including the subsequent violent death of the man charged with the assassination, and to report to [the President] its findings and conclusions.

Exec. Order No. 11,130, 3 C.F.R. 795 (1963) (1959-1963 Comp.).

The enabling legislation for the Commission specifically provided that "[t]he Commission, or any member of the Commission when so authorized by the Commission, shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation by the Commission." Pub. L. 88-202, 77 Stat. 362 (1963).

2. Public Land Law Review Commission

In the statute that established the Public Land Law Review Commission, the Commission was directed to

> (i) study existing statutes and regulations governing the retention, management, and disposition of the public lands; (ii) review the policies and practices of the Federal agencies charged with administrative jurisdiction over such lands insofar as such policies and practices relate to the retention, management, and disposition of those lands; (iii) compile data necessary to under-

> stand and determine the various demands on the public lands which now exist and which are likely to exist within the foreseeable future; and (iv) recommend such modifications in existing laws, regulations, policies, and practices as will, in the judgment of the Commission, best serve to carry out the policy set forth in section 1 of this Act.

Pub. L. 88-606, §4(a), 78 Stat. 982 (1964). The legislation also authorized the Commission to issue subpoenas "for the attendance and testimony of witnesses or the production of written or other matter." Id. §8(a).

3. National Commission on Food Marketing

In the legislation that established the National Commission on Food Marketing, the Commission was directed to "study and appraise the marketing structure of the food industry," including such matters as actual and likely changes in the food industry, appropriate changes in statutes, public policy, and organization of farming, and the effectiveness of the services and regulatory activities of the Federal Covernment. Pub. L. 88-354, §4(a), 78 Stat. 269 (1964). The legislation also authorized the Commission, by majority vote, "to require by subpena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties." Id. §5(a)(3).

4. Kerner Commission

In the Executive Order that established the National Advisory Commission on Civil Disorders (the "Kerner Commission"), the Commission was directed to

> investigate and make recommendations with respect to:
>
> (1) The origins of the recent major civil disorders in our cities, including the basic causes and factors leading to such disorders and the influence, if any, of organizations or individuals dedicated to the incitement or encouragement of violence.
>
> (2) The development of methods and techniques for averting or controlling such disorders, including the improvement of communications between local authorities and community groups, the training of state and local law enforcement and National Guard personnel in dealing with potential or actual riot situations,

and the coordination of efforts of the various law enforcement and governmental units which may become involved in such situations;

(3) The appropriate role of the local, state and Federal authorities in dealing with civil disorders; and

(4) Such other matters as the President may place before the Commission.

Exec. Order No. 11,365, 3 C.F.R. 674 (1967) (1966-1970 Comp.).

The enabling legislation for the Commission authorized "[t]he Commission, or any member of the Commission when so authorized by the Commission, . . . to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation by the Commission." Pub. L. 90-61, 81 Stat. 164 (1967).

5. Eisenhower Commission

In the Executive Order that established the National Commission on the Causes and Prevention of Violence (the "Eisenhower Commission"), the Commission was directed to

investigate and make recommendations with respect to:

(a) The causes and prevention of lawless acts of violence in our society, including assassination, murder and assault;

(b) The causes and prevention of disrespect for law and order, of disrespect for public officials, and of violent disruptions of public order by individuals and groups; and

(c) Such other matters as the President may place before the Commission.

Exec. Order No. 11,412, 3 C.F.R. 726 (1968) (1966-1970 Comp.).

The enabling legislation for the Commission authorized "[t]he Commission, or any member of the Commission when so authorized by the Commission, . . . to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation by the Commission." Pub. L. 90-338, 82 Stat. 176 (1968).

6. Wiretap Commission

In the legislation that established the National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance (the "Wiretap Commission"), the Commission was directed

> to conduct a comprehensive study and review of the operation of the provisions of [Title III of the Omnibus Crime Control and Safe Streets Act of 1968], in effect on the effective date of this section, to determine the effectiveness of such provisions during the six-year period immediately following the date of their enactment.

Pub. L. 90-351, §804(d), 82 Stat. 197 (1968). A 1971 amendment to the legislation authorized the Commission, or any duly authorized subcommittee or member thereof, to issue subpoenas, under the signature of the Chairman or any duly designated member of the Commission, for "the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers and documents as the Commission or such subcommittee or member may deem advisable." Pub. L. 91-644, Title VI, §20, 84 Stat. 1892 (1971).

7. Gambling Commission

In the legislation that established the Commission on the Review of the National Policy Toward Gambling (the "Gambling Commission"), the Commission was directed

> to conduct a comprehensive legal and factual study of gambling in the United States and existing Federal, State, and local policy and practices with respect to legal prohibition and taxation of gambling activities and to formulate and propose such changes in those policies and practices as the Commission may deem appropriate. In such study and review the Commission shall --
>
> (1) review the effectiveness of existing practices in law enforcement, judicial administration, and corrections in the United States and in foreign legal jurisdictions for the enforcement of the prohibition and taxation of gambling activities and consider possible alternatives to such practices; and
>
> (2) prepare a study of existing statutes of the United

> States that prohibit and tax gambling activities, and such a codification, revision, or repeal thereof as the Commission shall determine to be required to carry into effect such policy and practice changes as it may deem to be necessary or desirable.

Pub. L. 91-452, §805(a), 84 Stat. 937 (1970). The legislation also authorized the Commission, or any duly authorized subcommittee or member thereof, to issue subpoenas, under the signature of the Chairman or any duly designated member of the Commission, for "the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as the Commission or such subcommittee or member may deem advisable." Id. §806(a).

8. EFT Commission

In the legislation that established the National Commission on Electronic Fund Transfers (the "EFT Commission"), the Commission was directed to "conduct a thorough study and investigation and recommend appropriate administrative action and legislation necessary in connection with the possible development of public or private electronic fund transfer systems," taking into account such factors as the need to preserve and promote competition among financial institutions, the need to prevent unfair or discriminatory practices by financial institutions, and the impact of such systems on economic and monetary policy. 12 U.S.C. §2403(a). The legislation also authorized the Commission "to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation by the Commission." Id. §2404(d)(1).

9. TMI Commission

In the Executive Order that established the President's Commission on the Accident at Three Mile Island (the "TMI Commission"), the Commission was directed to

> conduct a comprehensive study and investigation of the recent accident involving the nuclear power facility on Three Mile Island in Pennsylvania. The study and investigation shall include:
>
> (a) a technical assessment of the events and their causes;
>
> (b) an analysis of the role of the managing utility;
>
> (c) an assessment of the emergency preparedness and response of the Nuclear Regulatory Commission and other Federal, state and local authorities;
>
> (d) an evaluation of the Nuclear Regulatory Commission's licensing, inspection, operation and enforcement procedures as applied to this facility;
>
> (e) an assessment of how the public's right to information concerning the events at Three Mile Island was served and of the steps which should be taken during similar emergencies to provide the public with accurate, comprehensible and timely information; and
>
> (f) appropriate recommendations based upon the Commission's findings.

Exec. Order No. 12,130, 44 Fed. Reg. 22,027 (1979).

The enabling legislation for the Commission authorized "[t]he Commission, or any member of the Commission when so authorized by the Commission, . . . to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence from the Nuclear Regulatory Commission or any person that relates to any matter under investigation by the Commission." Pub. L. 96-12, §2(a), 93 Stat. 26 (1979).

B. Compulsion of Testimony

1. Warren Commission

The enabling legislation for the Commission provided that

> [n]o person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to a subpena, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture (except demotion or removal from office) for

or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Pub. L. 88-202, 77 Stat. 362 (1963).

2. Kerner Commission

The enabling legislation for the Commission provided that

[n]o person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to a subpena, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture (except demotion or removal from office) for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Pub. L. 90-61, 81 Stat. 164 (1967).

3. Eisenhower Commission

The enabling legislation for the Commission provided that

[n]o person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to a subpena, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture (except demotion or removal from office) for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Pub. L. 90-338, 82 Stat. 176 (1968).

4. Wiretap Commission

Section 804(g)(3) of the Omnibus Crime Control and Safe Streets Act, as amended in 1971, provided that "[t]he Commission shall be 'an agency of the

United States' under subsection (1), section 6001, title 18, United States Code for the purpose of granting immunity to witnesses." Pub. L. 91-644, Title VI, §20, 84 Stat. 1892 (1971).

5. Gambling Commission

Section 806(c) of the Organized Crime Control Act of 1970 provided that "[t]he Commission shall be 'an agency of the United States' under subsection (1), section 6001, title 18, United States Code, for the purpose of granting immunity to witnesses." Pub. L. 91-452, §806(c), 84 Stat. 937 (1970).

6. TMI Commission

The enabling legislation for the Commission provided that

> [n]o person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to a subpena or order on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. The Commission may, with the approval of the Attorney General, issue an order requiring the person to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination in the same manner and subject to the same restrictions as a government agency may issue such an order pursuant to section 6004 of title 18, United States Code.

Pub. L. 96-12, §2(e), 93 Stat. 26 (1979).

C. Enforcement of Commission Subpoenas

1. Warren Commission

The enabling legislation for the Commission provided that

> [i]n case of contumacy or refusal to obey a subpena issued to any person [by the Commission or an authorized member of the Commission], any court of the United States within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Commission shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

Pub. L. 88-202, 77 Stat. 362 (1963).

2. National Commission on Food Marketing

The legislation establishing the Commission stated that the Commission was authorized, by majority vote, "in the case of disobedience to a subpena or order issued [by the Commission] to invoke the aid of any district court of the United States in requiring compliance with such subpena or order." Pub. L. 88-354, §5(a)(4), 78 Stat. 269 (1964).

3. Kerner Commission

The enabling legislation for the Commission stated that

> [i]n case of contumacy or refusal to obey a subpena issued to any person [by the Commission or an authorized member of the Commission], any court of the United States within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Commission shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

Pub. L. 90-61, 81 Stat. 164 (1967).

4. Eisenhower Commission

The enabling legislation for the Commission stated that

> [i]n case of contumacy or refusal to obey a subpena issued to any person [by the Commission or an authorized member of the Commission], any court of the United States within the jurisdiction of which the inquiry is carried on or the person guilty of contumacy or refusal to obey is found or resides, upon application by the Commission shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be treated by said court as a contempt thereof.

Pub. L. 90-338, 82 Stat. 176 (1968).

5. Wiretap Commission

The 1971 amendment to the enabling legislation for the Commission

stated that

> [i]n the case of contumacy or refusal to obey a subpena issued [under the signature of the Chairman or any duly designated member of the Commission] by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, the district court, at the request of the Chairman of the Commission, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee or member thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under inquiry. Any failure of any such person to obey any such order of the court may be punished by the court as a contempt thereof.

Pub. L. 91-644, §20, 84 Stat. 1892 (1971).

6. Gambling Commission

The legislation that established the Commission stated that

> [i]n the case of contumacy or refusal to obey a subpena issued [under the signature of the Chairman or any duly designated member of the Commission] by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, the district court, at the request of the Chairman of the Commission, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee or member thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under inquiry. Any failure of any such person to obey any such order of the court may be punished by the court as a contempt thereof.

Pub. L. 91-452, §806(b), 84 Stat. 937 (1970).

7. EFT Commission

The legislation that established the Commission stated that

> [i]f a person issued a subpena [by the Commission] refuses to obey such subpena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the Commission) order such person to appear before the Commission to produce evidence or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

12 U.S.C. §2404(d)(2).

D. Staff Evidence-Gathering Powers

1. Warren Commission

The enabling legislation for the Commission stated that

> [t]he Commission, or any member of the Commission or any agent or agency designated by the Commission for such purpose, may administer oaths and affirmations, examine witnesses, and receive evidence.

Pub. L. 88-202, 77 Stat. 362 (1963).

2. National Commission on Food Marketing

The legislation that established the Commission stated that "[t]he Commission is authorized to delegate any of its functions to individual members of the Commission or to designated individuals on its staff . . . ." The functions that the Commission was authorized to perform included the administration of oaths, the issuance of subpoenas, and the ordering of testimony "to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths . . . ." Pub. L. 88-354, §§5(a), 5(f), 78 Stat. 269 (1964).

3. Kerner Commission

The enabling legislation for the Commission stated that

> [t]he Commission, or any member of the Commission or any agent or agency designated by the Commission for such purpose, may administer oaths and affirmations, examine witnesses, and receive evidence.

Pub. L. 90-61, 81 Stat. 164 (1967).

4. Eisenhower Commission

The enabling legislation for the Commission stated that

> [t]he Commission, or any member or any agent or agency designated by the Commission for such purpose, may administer oaths and affirmations, examine witnesses, and receive evidence.

Pub. L. 90-338, 82 Stat. 176 (1968).

5. TMI Commission

The enabling legislation for the TMI Commission stated that

> [t]he Commission, or any member of the Commission or any agent or agency designated by the Commission for such purpose, may administer oaths and affirmations, examine witnesses, and receive evidence.

Pub. L. 96-12, 93 Stat. 26 (1979).

II. State Commissions of Investigation

A. Jurisdiction and Subpoena Authority

1. Illinois Legislative Investigating Commission

The Illinois Legislative Investigating Commission is empowered "to investigate generally any allegation which if proved would constitute a breach of public trust, a conflict of interest, a crime, a defect or omission from the laws of [the] State [of Illinois], or malfeasance, misfeasance or nonfeasance within [the] State [of Illinois]." Ill. Ann. Stat. ch. 63, §312 (1982 Supp.). The Commission may issue subpoenas, signed by either the Chairman or the Executive Director of the Commission, for "the attendance and testimony of witnesses and the production of documentary evidence relating to any matter under investigation or hearing." Ill. Ann. Stat. ch. 63, §314 (1982 Supp.).

2. New Jersey State Commission of Investigation

The New Jersey State Commission of Investigation is empowered to conduct investigations in connection with:

> a. The faithful execution and effective enforcement of the laws of the State, with particular reference but not limited to organized crime and racketeering;
>
> b. The conduct of public officers and public employees, and of officers and employees of public corporations and authorities;
>
> c. Any matter concerning the public peace, public safety and public justice.

N.J. Stat. Ann. §52:9M-2 (West 1970). The Commission may "subpena witnesses, compel their attendance, . . . and require the production of any books, records. documents or other evidence it may deem relevant or material to an investigation . . . ." N.J. Stat. Ann. §52:9M-12(c) (West 1983 Supp.).

3. New Mexico Governor's Organized Crime Prevention Commission

The New Mexico Governor's Organized Crime Prevention Commission has the explicit purpose of forestalling, checking, and preventing

> the infiltration and encroachment of organized crime into public and private affairs within New Mexico by:
>
> A. investigating the extent to which organized crime and racketeering has or has not infiltrated and encroached into private affairs within New Mexico;
>
> B. investigating those conditions, including the effectiveness of the execution and enforcement of the laws and the conduct of public officers and employees, which may lead to, or may have led to, the infiltration and encroachment of organized crime into public and private affairs within New Mexico; and
>
> C. reporting to the proper authorities and making public as authorized by [the New Mexico Organized Crime Act] [29-9-1 to 29-9-17 NMSA 1978] the results of its investigations and recommending corrective measures and improvements.

N.M. Stat. Ann. §29-9-4 (1979). The Commission is authorized to "subpoena witnesses, compel their attendance before the commission and require them to produce before the commission any books, records, documents or other evidence relevant or material to an investigation." N.M. Stat. Ann. §29-9-5 C(4) (1979).

4. New York State Commission of Investigation

The New York State Commission of Investigation is empowered, inter alia,

> to conduct investigations in connection with:
>
> a. The faithful execution and effective enforcement of the laws of the state, with particular reference but not limited to organized crime and rackereering;
>
> b. The conduct of public officers and public employees, and of officers and employees of public corporations and authorities;
>
> c. Any matter concerning the public peace, public safety and public justice.

N.Y. Unconsol. Laws §7502(1) (McKinney 1979). In addition, the Commission is required, "[b]y such means and to such extent as it shall deem appropriate, . . . [to] keep the public informed as to the operations of organized crime and problems of criminal law enforcement in the state." Id. §7502(10).

The Commission is authorized to "subpoena witnesses, compel their attendance, . . . and require the production of any books, records, documents or other evidence it may deem relevant or material to an investigation . . . ." N.Y. Unconsol. Laws §7502(11)(c) (McKinney 1979).

5. Pennsylvania Crime Commission

The Pennsylvania Crime Commission is empowered, inter alia,

> (1) To inquire into organized crime and activities of persons engaged in or associated with organized crime.
>
> (2) To inquire into public corruption and the activities of persons engaged in and associated with public corruption.
>
> (3) To make a detailed written report of every completed investigation which may include recommendation for legislative or administrative action.
>
> * * *
>
> (5) To submit . . . an annual report on the status of organized crime in the Commonwealth to a joint public hearing of the Judiciary Committee of the Senate and the House of Representatives.

Pa. Stat. Ann. tit. 71, §1190.4 (Purdon 1982 Supp.). The Commission is authorized to issue subpoenas "[t]o require the attendance and testimony of witnesses and the production of documentary evidence relative to any investigation which the commission may conduct in accordance with the powers given it. Such subpoenas shall be signed by the chairman, the executive director and two commissioners . . . ." Id. §1190.4(7).

B. Compulsion of Testimony

1. Illinois Legislative Investigating Commission

If a person, in any examination by or hearing before the Commission, refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, the Chairman or the Executive Director of the Commission may request a state circuit court to order the person to answer the question or produce the evidence. The court is required to

issue the order "unless it finds that to do so would be contrary to the public interest." The person subject to the order may not be prosecuted "for or on account of any transaction, matter or thing concerned [sic] which . . . he gave answer or produced evidence," with the exception of perjury or contempt committed in the answer or production. Ill. Ann. Stat. ch. 63, §315 (1982 Supp.).

2. New Jersey State Commission of Investigation

If a person, in the course of any investigation or hearing conducted by the Commission, refuses to answer a question or produce evidence "on the ground that he will be exposed to criminal prosecution or penalty or to a forfeiture of his estate thereby, the commission may order the person" to answer the question or produce the information. The Commission may issue the order only after giving the state Attorney General "and the appropriate county prosecutor" at least seven days' written notice of its intention to issue the order and an opportunity to object to the order. N.J. Stat. Ann. §52:9M-17(a) (West 1983 Supp.). Upon issuance of the order, the person who complies with the order is immune from having the answer or evidence, or evidence derived therefrom, used to expose him to criminal prosecution or penalty or to a forfeiture of his estate, except for perjury, contempt, and willful failure to answer or produce the evidence in accordance with the order. Id. §52:9M-17(b).

3. New Mexico Governor's Organized Crime Prevention Commission

If a person, in the course of any investigation or hearing conducted by the Commission pursuant to the New Mexico Organized Crime Act, refuses to answer a question or produce evidence "on the ground that he will thereby be exposed to criminal prosecution or penalty or forfeiture, the commission may order the person" to answer the question or produce the evidence. The Commission may issue the order only after giving the state Attorney General "and the appropriate district attorney" at least ten days' written notice of its intention to issue the order and an opportunity to object to the order. If the At-

torney General or the district attorney applies within ten days of the written notice, the Commission must defer the issuance of the order for a period, not longer than thiry days from the date of the application, as specified by the Attorney General or the district attorney. N.M. Stat. Ann. §29-9-9(A) (1979). Upon issuance of the order, the person who complies with the order is immune from having the answer or evidence, or evidence derived therefrom, used to expose him to criminal prosecution or penalty or forfeiture, except for perjury or contempt. Id. §29-9-9(b).

4. New York State Commission of Investigation

In any investigation or hearing conducted by the Commission relating to any crime or offense with respect to which a competent authority is authorized (by express statutory provision) to confer immunity, the Commission may confer immunity in accordance with section 50.20 of the New York Criminal Procedure Law. The Commission may issue the order only after affording the state Attorney General "and the appropriate district attorney" the opportunity to object to the grant of immunity. N.Y. Unconsol. Laws §7507 (McKinney 1979).

5. Pennsylvania Crime Commission

In all proceedings before the Commission, the Commission may request an immunity order from any judge of the state Commonwealth Court. The judge is required to issue the order when, in the judgment of the Commission, (1) the testimony or other information from a witness may be necessary to the public interest, and (2) the witness has refused, or is likely to refuse, to testify or provide other information on the basis of his privilege against self-incrimination. Pa. Stat. Ann. tit. 71, §1190.6(a), (b) (Purdon 1982 Supp.). Before seeking the order, the Commission must require its Executive Director to consult with the state Attorney General, "the district attorney of any affected county, and the United States attorney of any affected district in order to pre-

vent any interference with any of their investigations," and the results of the consultation must be reported to the Commission. In addition, the Commission must give notice of any request for an immunity order to the state Attorney General, the United States attorney of any affected district, and the district attorney of any affected county. Any of these officials may appear before the Commonwealth Court judge who hears the request, and request "a reasonable delay or denial of the grant of immunity if an immediate grant would jeopardize an investigation or prosecution." If the judge determines that the requested order "will jeopardize an actual or pending investigation or prosecution," he may delay or deny the immunity request. Id. §1190.6(f).

Upon issuance of the order, no testimony or other information compelled thereunder, or any information directly or indirectly derived therefrom, may be used against the witness in any criminal case, except for perjury, false swearing, contempt, or (as evidence, where otherwise admissible) "any proceeding where the witness is not a criminal defendant." Pa. Stat. Ann. tit. 71, §1190.6(d) (Purdon 1982 Supp.).

C. Enforcement of Commission Subpoenas

1. Illinois Legislative Investigating Commission

In case of disobedience to a subpoena,

> the Commission may petition any Circuit Court of the State for an order requiring the attendance and testimony of witnesses or the production of documentary evidence or both. . . . The court, upon the filing of such a petition, may, [sic] order the person refusing to obey the subpoena to appear at a designated place pursuant to any investigation or hearing, or to there produce documentary evidence, if so ordered, or to give evidence relating to the subject matter of that investigation or hearing. Any failure to obey such order of the Circuit Court may be punished by that court as a civil and/or criminal contempt upon itself.

Ill. Ann. Stat. ch. 63, §314 (1982 Supp.).

2. New Jersey State Commission of Investigation

If any person subpenaed pursuant to the New Jersey statute authorizing the Commission to investigate various matters neglects or refuses to obey the command of the subpena,

> any judge of the superior court or of a county court or any municipal magistrate may, on proof by affidavit of service of the subpena, payment or tender of the fees required and of refusal or neglect by the person to obey the command of the subpena, issue a warrant for the arrest of said person to bring him before the judge or magistrate, who is authorized to proceed against such person as for a contempt of court.

N.J. Stat. Ann. §52:9M-12(e) (West 1983 Supp.).

3. New Mexico Governor's Organized Crime Prevention Commission

If any person subpoenaed pursuant to section 29-9-5 of the New Mexico Organized Crime Act

> neglects or refuses to obey the command of the subpoena, any district court may, on proof by affidavit of service of the subpoena and of refusal or neglect by the person to obey the command of the subpoena, issue an order for the person to appear immediately before the court, which is authorized to proceed against the person as for a contempt of court. At any time before the return date of the subpoena, the person subpoenaed may file a petition to set aside the subpoena, modify the subpoena, or extend the return date thereon in the district court of any county in which the commission has an office or the district court of the county to which the person is subpoenaed to appear, and the court upon a showing of good cause may set aside the subpoena, modify it or extend the return date of the subpoena.

N.M. Stat. Ann. §29-9-5 C(4) (1979). In addition, if it appears that a witness "resides outside the state, may imminently depart the state or may secrete himself to avoid attendance before the commission or to avoid other lawful process," the Commission is authorized to "petition a district court ex parte to order the attendance of witnesses before the commission and the production before the commission of any books, records, documents or other evidence relevant or material to an investigation . . . . A witness may challenge execution of the order by filing a motion to quash the order with

the district court before the return date named in the order." Id. §29-9-5 C(5).

4. New York State Commission of Investigation

Although the statute that established the Commission does not specifically provide authority for Commission attorneys to represent the Commission in applying for enforcement of Commission subpoenas, Thomas Staffa, the Chief Counsel of the Commission, has informally advised that Commission attorneys have for some time represented the Commission in such applications. See, e.g., Temporary Commission of Investigation v. French, 68 A.D.2d 681, 418 N.Y.S.2d 774 (N.Y. App. Div. 1979).

5. Pennsylvania Crime Commission

Section 7 of the Pennsylvania Crime Commission Act provides that

> [i]f any person subpoenaed [by the Commission] shall neglect or refuse to obey the command of the subpoena, any judge of the Commonwealth Court, upon request of the commission, and on proof of affidavit of service of the subpoena, payment or tender of any fees required and of refusal or neglect by the person to obey the command of the subpoena may issue a warrant for the arrest of said person to bring him before said judge, who is authorized to proceed against said person as for a civil contempt of court.

Pa. Stat. Ann. tit. 71, §1190.7 (Purdon 1982 Supp.). In addition, a person who fails to comply with an immunity order requested and obtained by the Commission "may be adjudged in civil contempt and committed to a county jail by the issuing judge until such time as said person shall purge himself of contempt by complying with the immunity order." Id. §1190.6(e).

D. Staff Evidence-Gathering Powers

1. Illinois Legislative Investigating Commission

Section 13 of the Illinois Legislative Investigating Commission Act provides that "[a]ny Commissioner, the Executive Director, or Commission Counsel may administer oaths and affirmations, examine witnesses and receive evi-

dence." Ill. Ann. Stat. ch. 63, §313 (Smith-Hurd 1982 Supp.). Section 14 of the Act states that "[t]he Chairman or the Executive Director may sign subpoenas," and that the attendance of witnesses and the production of evidence may be required "before the Executive Director or the Chief Investigator of the Commission or the Commission Counsel." Id. §314.

2. New Jersey State Commission of Investigation

The statute that established the Commission provides that the Commission "may designate any of its members or any member of its staff" to administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation, and require the production of documentary evidence that the Commission may deem relevant or material to an investigation. N.J. Stat. Ann. §52:9M-12(c) (West 1983 Supp.).

3. New Mexico Governor's Organized Crime Prevention Commission

The New Mexico Organized Crime Act provides that "[t]he commission may designate any of its members or members of its staff" to administer oaths or affirmations, examine witnesses under oath or affirmation, subpoena witnesses, compel their attendance before the Commission, and require them to produce documentary evidence relevant or material to an investigation. This authorization contains a proviso that the designation of members or staff of the Commission to exercise any such powers be "pursuant to regulations adopted by the commission." N.M. Stat. Ann. §29-9-5 C(4) (1979).

4. New York State Commission of Investigation

The statute that established the Commission specifically authorizes the Commission "[t]o conduct public and private hearings and to designate one or more members of the commission or of its staff to preside over any such hearings." The statute also authorizes the Commission to designate "any of its members or any member of its staff" to administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation, and require the production of documentary evidence that the Commission may deem relevant or material to an investigation. N.Y. Unconsol. Laws §§7502(11)(b), (c) (McKinney 1979).

APPENDIX

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Norman Dorsen
PRESIDENT

Ira Glasser
EXECUTIVE DIRECTOR

May 11, 1984

Honorable Strom Thurmond
Chairman
Committee on Judiciary
United States Senate
Washington, D.C.

Re: S.J. Res. 233

Dear Mr. Chairman:

As you know, the Judiciary Committee is actively considering S.J. Res. 233, which delegates certain investigative powers to the President's Commission on Organized Crime. Since the ACLU was not offered an opportunity to testify on this legislation at the Committee's hearing on May 9, 1984, we are writing to express our views and to request that this letter be placed in the record of the hearings.

While the goal of increasing the government's and the public's knowledge of organized crime is laudable, we believe it is essential that fundamental civil liberties not be sacrificed in our zeal to attack this issue. The Commission on Organized Crime can effectively carry out its mandate without compromising individual rights or public access to the workings of government. That mandate is not to prosecute individuals or groups, but rather to collect information with a view toward making "recommendations concerning appropriate administrative and legislative improvements and improvements in the administration of justice." Executive Order 12435, § 2(a) (July 28, 1983). The Commission's mandate to propose policy rather than initiate prosecutions suggests that certain limitations should be observed in its work, particularly in light of the fact that witnesses before the Commission will not enjoy certain rights of criminal defendants -- such as the right to be apprised of the identities of witnesses or informants,

and the rights of confrontation and cross-examination of witnesses.

In this regard, we believe that the powers that would be conferred upon the Commission by S.J. Res. 233 as currently drafted are more than adequate. We urge the Committee to reject certain overly expansive provisions that we understand to have been endorsed by the staff of the Commission. In its current form, S.J. Res. 233 properly declines, for instance, to exempt the Commission from complying with the notice requirements of the Right to Financial Privacy Act (12 U.S.C. §§ 3401-3422) when it subpoenas financial records or information. That Act already provides sufficient flexibility for the protection of ongoing law enforcement investigations. Similarly, S.J. Res. 233 wisely omits any grant of extraordinary powers to Commission attorneys to enforce the Commission's subpoenas without the involvement of attorneys acting under the supervision of the Attorney General, who retains chief responsibility for the actual enforcement of the law. Nor does S.J. Res 233 authorize the Commission's staff to serve warrants or make arrests - functions that are more properly performed by the experienced law enforcement officers of the FBI, Immigration and Naturalization Service, Internal Revenue Service, and state and local law enforcement agencies, on which the Commission is free to draw for assistance.

We particularly urge the Committee to reject the argument that the Commission needs access to the raw transcripts of Title III communications intercepts. We do not understand the Commission's function to be to recreate the work performed by the National Commission for the Review of Federal and State Laws relating to Wiretapping and Electronic Surveillance. See Pub. L. 90-351, § 804, June 19, 1968, as amended by Pub. L. 91-644, Pub. L. 93-609, and Pub. L. 94-176. If the Commission wishes to review and evaluate Title III's effectiveness in the fight against organized crime, it should be able to do this by drawing on

the experience of law enforcement officials who have used it or by receiving summaries of evidence garnered through such intercepts. Unless the Commission actually plans to prosecute particular individuals in its hearings, however, the unedited transcripts of individual conversations are hardly necessary to its work.

Despite the relatively balanced approach taken by S.J. Res. 233, we would like to call the Committee's attention to two aspects of the legislation that give cause for concern. First, the resolution could be construed as authorizing the Commission to delegate the power to issue subpoenas to a single member (whether the Chairman or someone else) and even to members of the staff. Although Section 2 states that the power to issue subpoenas is the Commission's, the resolution nowhere specifies how many commissioners shall constitute a quorum or requires that a majority or minimum number of the members vote for the issuance of a subpoena. In this aspect, the resolution differs from statutes adopted by Congress in support of the activities of a number of other national commissions. See, e.g., Pub. L. 90-321, § 405, May 29, 1968 (three out of nine members of National Commission on Consumer Finance may authorize issuance of subpoena); Pub. L. 304, § 7 Aug. 9, 1955 (majority vote of members of subcommittees of Commission on Government Security required for issuance of subpoenas); Pub. L. 91-450, §§ 804(d), 806(a) (eight members constitute a quorum of the Commission on the Review of the National Policy Toward Gambling; Commission and its sub-committees authorized to issue subpoenas).

Moreover, Section 9(a) states that "[p]rocess and papers issued by the Commission or by a member of the Commission or a member of the staff of the Commission designated by the Commission for such pupose," may be served according to certain procedures. This language reaffirms the implication that single-member subpoenas are permissible, and also permits an inference that a member of a staff may be delegated subpoena power by the Commission

itself. The delegation of such power to the staff would be, to the best of our knowledge, wholly unprecedented in the history of national commissions. Even such prior law enforcement-related commissions as the President's Commission on Law Enforcement and Administration of Justice, the National Advisory Commission on Civil Disorders, and the National Commission on the Causes and Prevention of Violence avoided such a step. See Executive Order 11236, July 23, 1965; Pub. L. 91-452; Pub. L. 90-61, respectively. Stronger safeguards are needed for the use of these potent but highly intrusive investigative tools.

Second, we urge the Committee to delete section 7 of the resolution, which effectively repeals the Privacy Act, 5 U.S.C. § 552a, both insofar as it would otherwise prohibit disclosure of information to the Committee in the first place and to the extent that it would require notice to the subject of the disclosure. Piecemeal amendment of the Privacy Act, even for the worthy purpose of investigating organized crime, sets a dangerous precedent. The Privacy Act already contains a generous exemption for criminal law enforcement. Since the Committee's function, in any event, is not to prosecute individuals, but rather to recommend policy, the number of cases in which it needs agency records pertaining to specific individuals should be extremely limited.

As the Committee's consideration of S.J. Res. 233 proceeds, we would be pleased to work with you, other Members and the staff to perfect this legislation.

Sincerely,

Jerry S. Berman
Chief Legislative Counsel

Eric L. Richard, Esq.
Former Associate Deputy
Attorney General,
U.S. Department of Justice

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 17, 1984

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Last week, in the course of the testimony by Judge Kaufman before the Committee on the Judiciary in support of S. J. Res. 233, a question arose concerning the differences between that resolution and the counterpart legislation in the House of Representatives, H.J. Res. 548, with regard to the representation of the Commission before the courts of the United States. In testifying that he favored leaving that authority with the Department of Justice as provided in the Senate version of the legislation, Judge Kaufman emphasized that it would be important to assure prompt action in securing court orders to enforce the Commission's subpoenas.

The Department of Justice is sensitive to the need to ensure that court orders enforcing subpoenas issued by the Commission, as well as other court orders relating to the work of the Commission, be obtained as expeditiously as possible. The Department has assured the Commission that applications for such orders will be made promptly. It has also advised the Commission that attorneys employed by the Commission will be asked to assist in the preparation of the necessary papers and to participate fully in the presentation of oral argument to the court.

Thank you for your prompt attention to the proposed legislation. I know that you are aware of its importance to the effective work of the Commission.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative and
Intergovernmental Affairs

Executive Order 12435 of July 28, 1983

President's Commission on Organized Crime

48 F.R. 34723

ADVISORY COMMITTEE

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), an advisory committee on organized crime, it is hereby ordered as follows:

NOT MORE THAN 20 MEMBERS

Section 1. (a) There is established the President's Commission on Organized Crime. The Commission shall be composed of not more than twenty members appointed or designated by the President.

PRES. APPOINTS CHAIRMAN

(b) The President shall designate a Chairman from among the members of the Commission.

Sec. 2. (a) The Commission shall make a full and complete national and region-by-region analysis of organized crime; define the nature of traditional organized crime as well as emerging organized crime groups, the sources and amounts of organized crime's income, and the uses to which organized crime puts its income; develop in-depth information on the participants in organized crime networks; and evaluate Federal laws pertinent to the effort to combat organized crime. The Commission shall advise the President and the Attorney General with respect to its findings and actions which can be undertaken to improve law enforcement efforts directed against organized crime, and make recommendations concerning appropriate administrative and legislative improvements and improvements in the administration of justice.

(b) The Commission shall report to the President from time to time as requested and shall submit its final report by March 1, 1986.

Sec. 3. *Administration.* (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Commission such information as it may require for purposes of carrying out its functions.

(b) Members of the Commission shall serve without compensation for their work on the Commission. However, members appointed from among private citizens of the United States or who are Members of Congress or Federal Judges may, subject to the availability of funds, be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701–5707).

(c) The Attorney General shall, to the extent permitted by law, provide the Commission with such administrative services, funds, facilities, staff and other support services as may be necessary for the performance of its functions.

Sec. 4. *General.* (a) Notwithstanding any other Executive Order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Commission, shall be performed by the Attorney General, in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Commission shall, unless otherwise extended, terminate two years from the date of this Order.

Ronald Reagan

THE WHITE HOUSE
July 28, 1983

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 9, 1984

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

On November 18, 1983, we transmitted to the Vice President, on behalf of the President's Commission on Organized Crime, a legislative proposal to provide the Commission with the statutory authority necessary for the performance of its important responsibilities. Subsequently, you kindly introduced the proposal, on behalf of the Commission, as S.J. Res. 233.

As the result of further review of the Commission's needs, we believe that section 7 of S.J. Res. 233 should be amended to authorize the Commission, in certain circumstances, to have access to and to use wire and oral communications intercepted in accordance with the provisions of Title III of the Organized Crime Control Act of 1970, 18 U.S.C. 250 et seq. Access to and use of such information would be important to the Commission's ability to discharge its responsibilities in developing detailed information concerning the operation of organized crime networks.

Enclosed are suggested amendments to section 7 of S.J. Res. 233 to accomplish this end. More specifically, we propose the redesignation of subsections (a) and (b) as subsections (e) and (f) and the addition of four new subsections. The proposed subsections (a), (b), (c), and (d) conform closely to the language of 18 U.S.C. 2517(1), (2), and (3) but do not amend the provisions of Title III directly. The principal modification of the language now in Title III is the addition of a requirement that the Attorney General determine that disclosure of Title III information "will not jeopardize federal law enforcement interests." The purposes of this limitation are to help assure against any accidental jeopardizing of ongoing law enforcement activities or disclosure of the identities of confidential informants, and otherwise to reduce the potential for disclosures that unknowingly could undermine law enforcement efforts.

With this modification, we believe S.J. Res. 233 would give the Commission important powers it needs to carry out the mission assigned it by the President. Of course, representatives of the Department of Justice are available at your convenience to discuss any aspect of S.J. Res. 233 with you or your staff. In the meantime, we appreciate your prompt attention to this issue.

The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

Robert A. McConnell
Assistant Attorney General

Enclosures

cc: Honorable Paul Laxalt
Chairman, Subcommittee on Criminal Law

Honorable Joseph R. Biden, Jr.
Ranking Minority Member
Subcommittee on Criminal Law

Proposed Amendments to S.J. Res. 233

1. Paragraph (e) of section 1 is amended by inserting the following language after "section 7,":

"the terms 'wire communication', 'oral communication', 'intercept', and 'contents' have the meanings set forth in section 2510, Title 18, United States Code, and".

2. Subsections (a) and (b) of section 7 are redesignated subsections (e) and (f), respectively.

3. New subsections (a), (b), (c), and (d) are inserted in section 7, reading as follows:

"(a) Nothing in chapter 119, Title 18, United States Code shall be deemed to prohibit an investigative or law enforcement officer who, by a means authorized by said chapter, has obtained knowledge of the contents of a wire or oral communication, or evidence derived therefrom, from disclosing such contents to the Commission or a subcommittee of the Commission, or to a member of the Commission or a member of the staff of the Commission designated by the Chairman or the Commission for such purpose, to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure, or the official duties of the Commission, the subcommittee of the Commission, the member of the Commission, or the member of the staff of the Commission receiving the disclosure, and conforms with procedures promulgated by the Attorney General to ensure that he, or his designee, can determine that such disclosure will not jeopardize federal law enforcement interests.

(b) Nothing in chapter 119, Title 18, United States Code shall be deemed to prohibit an investigative or law enforcement officer, or a member of the Commission or a member of the staff of the Commission, who, by a means authorized by said chapter, has obtained knowledge of the contents of a wire

or oral communication, or evidence derived therefrom, from using such contents to the extent that such use is appropriate to the proper performance of his official duties.

(c) Nothing in Chapter 119, Title 18, United States Code, shall be deemed to prohibit the Commission, or a member of the Commission, or a member of the staff of the Commission, who by a means authorized by said chapter, has obtained knowledge of the contents of a wire or oral communication, or evidence derived therefrom, from disclosing such contents to the extent that such disclosure is appropriate to the proper performance of his or the Commission's official duties, if the Attorney General, or his designee, determines that such disclosure will not jeopardize federal law enforcement interests.

(d) Nothing in chapter 119, Title 18, United States Code, shall be deemed to prohibit a person who has received, by a means authorized by said chapter, information concerning a wire or oral communication, or evidence derived therefrom, intercepted in accordance with the provisions of said chapter, from disclosing the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in a proceeding before or ancillary to the Commission, if the Attorney General or his designee determines that such disclosure will not jeopardize federal law enforcement interests.

RESOLUTION

Whereas Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (18 U.S.C. §§2510-2520), regulates the interception of wire or oral communications by investigative or law enforcement officers and the disclosure and use of the contents of such communications, or evidence derived therefrom, to other investigative or law enforcement officers; and

Whereas it appears that the legislative history and judicial interpretations of Title III do not permit the members and staff of the President's Commission on Organized Crime to be considered "investigative or law enforcement officers" to whom disclosure of information obtained pursuant to Title III may be made; and

Whereas the Senate Judiciary Committee has stated, with reference to Title III, that "intercepting the communications of organized criminals is the only effective means of learning about their activities"; and

Whereas the Commission has been charged by the President of the United States with the responsibilities, inter alia, for "evaluat[ing] Federal laws pertinent to the effort to combat organized crime" and "develop[ing] in-depth information on the participants in organized crime networks"; and

Whereas the Commission believes that even the authority to issue subpoenas, to immunize witnesses, and to seek judicial enforcement of Commission subpoenas -- while vital to the work of the Commission -- will not suffice for the Commission to fulfill these responsibilities if it is unable to obtain access to and use of Title III information (other than information from surveillances that are in progress or that were conducted in violation of Title III),

Now, therefore, be it resolved that the Chairman of the Commission be, and hereby is, authorized and directed by the Commission to inform the relevant committees and subcommittees of Congress that the members of the Commission unanimously agree that the Commission must have the authority to obtain access to, and to use, Title III information in order to fulfill its responsibilities.

H.J. RES. 548, AS PASSED

Joint Resolution authorizing the President's Commission on Organized Crime to compel the attendance and testimony of witnesses and the production of information, and for other purposes.

TAKING OF TESTIMONY AND RECEIPT OF EVIDENCE

SECTION 1. The Commission established by the President by Executive Order 12435, dated July 28, 1983 (hereinafter in this joint resolution referred to as the "Commission") may hold hearings. The Commission, or a member of the Commission or member of the staff of the Commission designated by the Commission for such purpose, may administer oaths and affirmations, examine witnesses, and receive documentary or other information in evidence.

SUBPENA POWER

SEC. 2. (a) The Commission shall have the power to issue subpenas, under the signature of the Chairman of the Commission or, if authorized by the Commission, under the signature of another member or the staff director of the Commission, requiring the attendance and testimony of witnesses before the Commission, or before a member of the Commission or a member of the staff of the Commission designated by the Commission for such purpose, and the production of information relating to a matter under investigation by the Commission. A subpena may require the person to whom it is directed to produce such information at any time before such person is to testify, and may require the attendance of a witness and the production of information.

(b) In case of contumacy or refusal to obey a subpena issued to a person under this section, a court of the United States within the jurisdiction of which the person is directed to appear or produce information, or within the jurisdiction of which the person is found, resides, or transacts business, may upon application by the Commission after the Commission notifies the Attorney General, issue to such person an order requiring such person to appear before the Commission, or before a member

of the Commission or a member of the staff of the Commission designated by the Commission for such purpose, there to give testimony or produce information relating to the matter under investigation, as required by the subpena. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

(c) Process of a court to which application may be made under this section may be served in a judicial district wherein the person required to be served is found, resides, or transacts business.

TESTIMONY OF PERSONS IN CUSTODY

SEC. 3. A court of the United States within the jurisdiction in which testimony of a person held in custody is sought by the Commission or within the jurisdiction of which such person is held in custody, may, upon application by the Commission after the Commission notifies the Attorney General, issue a writ of habeas corpus ad testificandum requiring the custodian to produce such person before the Commission, or before a member of the Commission or a member of the staff of the Commission designated by the Commission for such purpose.

IMMUNITY

SEC. 4. The Commission is an agency of the United States for the purpose of part V of title 18 of the United States Code.

SERVICE OF PROCESS: WITNESS FEES

SEC. 5. (a) Process and papers issued by the Commission, or by a member of the Commission or a member of the staff of the Commission designated by the Commission for such purpose, may be served in person, by registered or certified mail, by telegraph, or by leaving a copy thereof at the residence or principal office or place of business of the person required to be served. When service is by registered or certified mail or by telegraph, the return post office receipt or telegraph receipt therefor shall be proof of service. Otherwise, the verified return by the individual making service, setting forth the manner of such service, shall be proof of service.

(b) A witness summoned before the Commission, or before a

member of the Commission or a member of the staff of the Commission, shall be paid the same fees and mileage as are paid witnesses in the courts of the United States, and a witness whose deposition is taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

ACCESS TO OTHER RECORDS AND INFORMATION

Sec. 6. (a)(1) The investigative activities of the Commission are civil or criminal law enforcement activities for the purpose of section 552a(b)(7) of title 5, United States Code.

(2) The Commission is a Government authority, and an investigation conducted by the Commission is a law enforcement inquiry, for the purposes of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.).

(b) For the purposes of section 2517 of title 18, United States Code, and as limited by subsection (c), the members and staff of the Commission are investigative or law enforcement officers, except that in the case of a disclosure to or by any member or staff of the Commission of any of the contents of a communication intercepted under section 2516(1) of such title, such disclosure may be made only after the Attorney General or the Attorney General's designee has had an opportunity to determine that such disclosure may jeopardize Federal law enforcement interests and has not made that determination, and in the case of a disclosure to or by any member or staff of the Commission of any of the contents of a communication intercepted under section 2516(2) of such title, such disclosure may be made only after the appropriate State official has had an opportunity to make a determination that such disclosure may jeopardize State law enforcement interests and has not made that determination.

(c)(1) A person to whom disclosure of information is made under this section shall use such information solely in the performance of such person's duties for the Commission and shall make no disclosure of such information except as provided for by this joint resolution, or as otherwise authorized by law.

(2) A disclosure or use by a member or the staff of the Commission of the contents of a communication intercepted under chapter 119 of title 18 of the United States Code may be made solely in the course of carrying out the functions of the Commission as such functions were established by Executive Order 12435, dated July 28, 1983.

FEDERAL PROTECTION FOR MEMBERS AND STAFF OF THE COMMISSION

SEC. 7. Conduct, which if directed against a United States attorney would violate section 111 or 1114 of title 18, United States Code, shall, if directed against a member or the staff of the Commission, be subject to the same punishments as are provided by such sections for such conduct.

CLOSURE OF MEETINGS

SEC. 8. The functions of the President under Section 10(d) of the Federal Advisory Act (86 Stat. 770) as amended, shall be performed by the Chairman of the Commission.

COMMISSION MEMBERS

Judge Irving R. Kaufman of New York (Chairman). Judge Kaufman has been on the U. S. Court of Appeals for the Second Circuit since 1961. He served as chief judge from 1973 to 1980. He had served as a judge of the U. S. District Court from 1949 to 1961. Judge Kaufman was an Assistant U. S. Attorney from 1936 to 1940 and, in the early 1940s, a special assistant to the Attorney General.

Other members of the Commission:

Phyllis Teresa Aranza of Texas. Miss Aranza is a lieutenant with the homicide division of the Houston Police Department. She is a 1971 graduate of the University of Houston and is pursuing a masters degree in criminal justice at Sam Houston State University.

Jesse A. Brewer, Jr., of California. Brewer has been a member of the Los Angeles Police Department since 1947 and its deputy chief since 1981, with responsibility for supervision of numerous major crimes investigations. He was a member of the Task Force on Disorders and Terrorism of the National Advisory Committee on Criminal Justice Standards and Goals named by the Law Enforcement Assistance Administration (1976).

Carol Corrigan of California. Ms. Corrigan is a criminal osecutor in the office of the District Attorney of Alameda County. Since becoming a trial lawyer in 1975, she has handled numerous drug and public corruption cases.

Justin J. Dintino of New Jersey. Lt. Col. Dintino, executive officer of the New Jersey State Police Department, has led that department's intelligence unit to a national reputation for excellence. He is general chairman of the Law Enforcement Intelligence Unit (a national law enforcement network) and serves on the Organized Crime Committee of the International Association of Chiefs of Police and the Policy Board of the Middle Atlantic-Great Lakes State Organized Crime Law Enforcement Network.

John F. Duffy of California. Duffy has been the elected sheriff of San Diego County since 1970, having previously held various positions in the Sheriff's Department since 1953. He is president of the Police Executive Research Forum and serves on the board of directors of the National Sheriffs Association and on the Advisory Board of the National Institute of Justice. He is also a policy board member of the Western States Information Network.

William J. Guste, Jr., of Louisiana. Guste is attorney general of Louisiana and has been a member of the Governor's Commission on Law Enforcement and the Administration of Justice since 1974. He served as a member and president of the New Orleans ... :opolitan Crime Commission in 1956-57 and as a member and

PRESIDENT'S COMMISSION ON ORGANIZED CRIME

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Chairman:
Honorable Irving R. Kaufman

Executive Director and
Chief Counsel:
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Carol Corrigan
Justin J. Dintino
William J. Guste, Jr.
Judith R. Hope
Philip R. Manuel
Thomas F. McBride
Eugene H. Methvin
Edwin L. Miller, Jr.
Manuel J. Reyes
Honorable Peter W. Rodino, Jr.
Charles H. Rogovin
Barbara A. Rowan
Frances A. Sclafani
Samuel K. Skinner
Honorable Potter Stewart
Honorable Strom Thurmond

DATE: March 29, 1984

FROM: James D. Harmon, Jr.
Executive Director/Chief Counsel
President's Commission on
Organized Crime

TO: Honorable William J. Hughes
Chairman, Subcommittee on Crime
House Committee on the Judiciary
341 Cannon House Office Building
Washington, D. C. 20515

SUBJ: Biographies of Commission Staff Members

For your information I am attaching a brief run-down of the key staff members of the President's Commission on Organized Crime. As you can see they are highly qualified people with impressive backgrounds and I am confident they will serve the Commission well in the months ahead.

Attachments

Key Staff Members of the President's Commission
on Organized Crime

JAMES D. HARMON, JR., Executive Director and Chief Counsel of the Commission, has been a prosecutor since 1971, including six years in the New York County (Manhattan) District Attorney's Office and more than five years with the Organized Crime Strike Force in Brooklyn, New York. He served as Assistant Attorney in Charge of the Strike Force, heading the investigations of numerous organized crime figures in the New York City area. Harmon was Senior Litigation Counsel in the U.S. Attorney's Office for the Eastern District of New York when he joined the Commission on Organized Crime. He holds degrees from the U.S. Military Academy (B.S., 1966), Dickinson Law School (J.D., 1971), and New York University Law School (LL.M., 1977). In 1967 Harmon received the Silver Star and other decorations as a U.S. Army infantry officer in Vietnam. He was born August 18, 1943.

RODNEY G. SMITH, Deputy Executive Director, has been in law enforcement since graduating from law school in 1975. During that time, he served for three years as an Examining Attorney at New York City's Department of Investigation, handling municipal corruption cases. He also served as an Assistant United States Attorney in the Eastern District of New York, and for three years was a Trial Attorney in the Criminal Division of the U.S. Department of Justice. Prior to joining the President's Commission, he was a Deputy Chief Counsel to the U.S. Senate Subcommittee on Investigations. He is a graduate of Dartmouth College (A.B., cum laude, 1971) and Boston University Law School (J.D., 1975). During the Vietnam conflict Smith received the Purple Heart for wounds while serving as an artilleryman in the U.S. Marine Corps. He was born August 29, 1947.

C. STANLEY HUNTERTON, Deputy Chief Counsel to the Commission, holds degrees from Syracuse University (B.A., 1970) and Syracuse University College of Law (J.D., 1974). Hunterton served for four years as a prosecutor with the Organized Crime Strike Force in Detroit, Michigan, handling public corruption, labor racketeering and narcotics cases. Before joining the staff of the Commission he was Deputy Attorney in Charge of the Organized Crime Strike Force in Las Vegas, Nevada, where, for five years, he worked on prosecutions involving the diversion of casino revenues to organized crime interests. He was born September 10, 1948.

ARTHUR P. BRILL, JR., Director of Public Affairs for the Commission, has handled sensitive media issues for the past fifteen years. He was Deputy Director of Public Affairs for the Department of Justice before joining the Commission. Prior to his appointment at Justice, Brill was the Director of Public Affairs for the State Department's Cuban-Haitian Task Force which handled the arrival and resettlement of 143,000 Cubans and Haitians who came to the U.S. during the Mariel boatlift in 1980. Previously, Brill was the press spokesman for the U.S. Marine Corps for four years where he coordinated all internal and external information programs. He received his M.S. in Public Relations from Boston University in 1972 and a B.A. from Iona College in 1953. As a Marine infantry officer in Vietnam he was awarded three Bronze Star Medals and a Purple Heart for combat action. He was born June 29, 1936.

MANUEL J. GONZALEZ, Chief Investigator of the Commission, was previously a supervisory special agent with the FBI in New York City. Gonzalez has been active in the investigation of organized crime for seventeen years. Prior to joining the Commission he had responsibility for all FBI investigations concerning the Luchese and Bonanno families. He is intimately familiar with most aspects of organized criminal activities and has extensive background with all five New York families. Gonzalez had six years' detective experience with the New York City Police Department, where his responsibilities included investigations of organized crime groups. Gonzalez has had assignments in terrorism and organized criminal activity for most of his law enforcement career. He has a B.S. degree from John Jay College and a degree in mortuary science. He was born February 5, 1944.

JONATHAN J. RUSCH, Counsel to the Commission, holds degrees from Princeton University (A.B., cum laude, 1974), the University of Virginia (M.A., 1978), and the University of Virginia Law School (J.D., 1980), where he was a member of the Editorial Board of the Virginia Law Review. Rusch has served as a Special Assistant to the U.S. Attorney General, and was associated with the Washington law firm of Cleary, Gottlieb, Steen & Hamilton before joining the staff of the Commission. He has also been an intelligence analyst with the Organized Crime and Racketeering Section of the U.S. Department of Justice. He was born October 16, 1952.

DONNA CONGENI, Deputy Counsel to the Commission, came to the Commission from the Organized Crime Strike Force in Cleveland, Ohio, where for over three years she prosecuted numerous organized crime figures, including the underboss of the Cleveland Family, who is serving a life sentence without parole. Previously, she was a prosecutor with the Cuyahoga County (Ohio) District Attorney's Office. Congeni holds degrees from Boston College (B.A., 1973) and George Washington University Law School (J.D., 1976). She was born March 10, 1951.

ARTHUR H. AMRON, Deputy Counsel to the Commission, holds degrees from Colgate University (B.A., high honors, 1978) and the Harvard Law School (J.D., cum laude, 1982). Amron served as law clerk to Judge Irving R. Kaufman of the U.S. Court of Appeals for the Second Circuit before joining the staff of the Commission. He supervises the Commission's New York City Office. He was born December 3, 1956.

STEPHEN M. RYAN, Deputy Counsel to the Commission, holds degrees from Cornell University (B.S., 1977) and Notre Dame Law School (J.D., cum laude, 1980). Ryan served as a law clerk to Judge Robert A. Grant of the U.S. District Court for the Northern District of Indiana, and was associated with the Washington law firm of Howrey & Simon before joining the staff of the Commission. He was born April 19, 1955.

LOUIS A. DEMARTINIS, Deputy Chief Investigator of the Commission, has twenty-six years of experience in law enforcement. Before joining the Commission he was Deputy Director, Office of Professional

Responsibility, Immigration and Naturalization Service. Previously, DeMartinis was Supervising Special Investigator for the New York State Special Prosecutor's Office, investigating corruption in the criminal justice system. At that time, he was also representative to the Organized Crime Strike Force in Brooklyn, New York. DeMartinis spent twenty years with the New York City Police Department and served as commander of detectives in various areas of the city. A two-year Marine Corps veteran, he received a M.A. degree from the State University of New York in 1972 and taught organized crime at St. John's University. He was born December 13, 1933.

DAVID C. WILLIAMS, Staff Investigator, came to the Commission from the U.S. Department of Labor's Office of Organized Crime and Racketeering, where he served as the Special Agent in Charge of the New York City Office. He served in the same capacity in Cleveland, and in the Chicago Field Office as a Supervisory Investigator. In his twelve-year career as a Federal investigator, Williams also served for four years with the U.S. Secret Service as a Special Agent in Chicago. He began his career as a Special Agent in U.S. Military Intelligence in Vietnam, where he was awarded the Vietnamese Medal of Honor and the Bronze Star. Williams holds a B.A. degree and two graduate degrees from the University of Illinois. He was born January 7, 1947.

JOHN F. LEONARD, Staff Investigator, has had over twenty-five years of law enforcement experience. He has been the Resident Special Agent, Office of Inspector General, U.S. Small Business Administration in New York City since 1981 and was the Investigator for the U.S. Senate Small Business Committee from 1979 through 1981. Leonard also conducted fraud investigations for Blue Cross and Blue Shield of Greater New York, and Brooklyn Union Gas Company from 1977 through 1979. He served twenty years with the New York City Police Department and was an Investigator in the Detective Division of the Office of the Queens County District Attorney. During that time he conducted successful joint investigations with the U.S. Treasury Department's Bureau of Alcohol, Tobacco and Firearms into organized criminal activities. Leonard received a B.S. degree at the New York Institute of Technology, Westbury, New York in 1977. He was born August 3, 1935.

WAYNE R. MCKENNA, Staff Investigator, has worked for the U.S. Customs Service and the Immigration and Naturalization Service for the past ten years. He is a graduate of Rutgers University and has a M.A. degree in Government (Public Administration). McKenna is a graduate of the Federal Law Enforcement Training Center, Glynco, Georgia and has specialized experience in the analysis of law enforcement intelligence information and organized criminal activity. He was born April 28, 1949.

CLARK R. MOLLENHOFF, Staff Investigator, has over thirteen years of experience as a specialized investigator. Beginning in 1971 he served four years as a plain clothes detective in the Vice-Intelligence

Division of the Montgomery County, Maryland, Police Department, spending three years as an undercover narcotics detective. Since 1974 he has been a Staff Investigator and Professional Staff Member of three congressional committees: the U.S. Senate Permanent Subcommittee on Investigations, the U.S. House Committee on Banking, and the U.S. Senate Committee on Labor. He has participated in and contributed to the research and writing of several books and articles on government operations and investigations. He is a graduate of Roanoke College in Salem, Virginia. He was born October 5, 1949.

KAREN A. HAINER, Staff Investigator, has been an investigator and writer for the past six years. She was an Assistant Director and Editor with the Council of Better Business Bureaus, and an Investigator for the U.S. Senate Permanent Subcommittee on Investigations. She has written articles on charitable fund raising scams as well as congressional reports on the fraudulent uses of Federal identity documents, fraud in the Federal workers' compensation program, and the criminal use of offshore tax havens. Hainer has a graduate degree in German studies from the American University. In 1976-77 she lived in Nuernberg, West Germany as a German Academic Exchange Scholar. She was born July 27, 1954.

RICHARD R. ANNICHARICO, Staff Investigator, has spent eighteen years as a Law Enforcement Specialist for the Internal Revenue Service. Prior to joining the Commission, he was Group Manager of the North Atlantic Regional Undercover Program and IRS representative to the New York/New Jersey Organized Crime/Drug Enforcement Task Force. He was a group supervisor coordinating investigations of organized crime families in New York. Annicharico has worked undercover for several years targeting the Persico faction of the Colombo organized crime family. He received a B.B.A. degree from Pace University and served in the Marine Corps from 1960 to 1963. He was born September 2, 1942.

ANTHONY J. LOMBARDI, Staff Investigator, headed the Organized Crime and Narcotics Group in the Eastern District of New York for the Internal Revenue Service prior to joining the Commission. He has spent a total of eighteen years as a law enforcement specialist with the IRS. Lombardi has been Senior Regional Analyst and as a Special Enforcement Assistant, coordinated all investigations targeting organized crime activity in the North Atlantic Region. He also supervised IRS Strike Force representatives. Lombardi set up the information-gathering and retrieval system used by the IRS, and was part of an initial Task Force set up to identify organized crime members by the IRS. He received a B.B.A. from Pace University. He was born June 23, 1943.

DOUGLAS A. LEVIEN, JR., Staff Investigator, was the New York City Police Department representative to the Organized Crime Strike Force in Brooklyn, New York, before joining the staff of the Commission. Since joining the New York City Police Department in 1969, Detective LeVien has been directly involved in numerous undercover investigations of organized crime-related activities, and has become a leading expert on the infiltration of organized crime families. He was born May 27, 1947.

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

8 MAY 1984

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on sections 2(b) and 3 of H.J. Res. 548, a resolution "authorizing the President's Commission on Organized Crime to compel the attendance and testimony of witnesses and the production of information and for other purposes," as passed by the House of Representatives on May 7, 1984. We believe the adoption of these sections has the potential for undermining the law enforcement efforts of the Deparment of Justice. We strongly oppose their inclusion.

Section 2(a) of H.J. Res. 548 authorizes the President's Commission on Organized Crime, which was established by Executive Order No. 12435, to issue subpoenas compelling the testimony of individuals before the Commission, a member of the Commission, or the Commission's staff. Subpoena authority compelling the production of information is also included in section 2(a). We fully support this authority as a necessary instrument for the Commission to fulfill its mandate. Section 2(b), however, provides that the Commission, after notification to the Attorney General, may request an appropriate court to enforce a subpoena of the Commission. Additionally, section 3 of H.J. Res. 548 would authorize the Commission, after notification to the Attorney General, to seek a court order issuing a writ of habeas corpus to the custodian of an individual and requiring the custodian to produce the individual to the Commission. In our view, this assignment of litigation authority for the enforcement of Commission subpoenas is inconsistent with sound principles reflected in existing law and could seriously undercut the Department's on-going law enforcement activities.

As you know, the Attorney General has historically exercised plenary responsibility over the conduct of legal affairs of the United States. See 28 U.S.C. §§516 and 519. See also United States v. San Jacinto Tin Co., 125 U.S. 273, 279 (1888); Confiscation Cases, 7 Wall. (74 U.S.) 454, 457-58 (1868). This centralized control facilitates the presentation of uniform positions in court on important legal issues, provides for greater objectivity in the handling and filing of cases by attorneys who are not themselves affected litigants, and helps to ensure that the law is enforced equally and fairly. In light of these considerations, both Congress and the Executive branch have traditionally resisted the delegation of government litigating authority to persons outside the control or supervision of the Attorney General..

Sections 2(b) and 3 of H.J. Res. 548 seek to bestow litigating authority on the Commission and therefore amend, in effect 28 U.S.C. §516. This is inconsistent with the salutory function of the Attorney General and, if carried to an extreme, would permit each agency of the government to make its position the government's position of the day. As the Fifth Circuit has indicated in I.C.C. v. Southern Railway Co., 543 F.2d 543, 535 (5th Cir. 1976), such a result is not in the interest of the government, nor would it be well received in the courts. The litigation of the United States is unique from that involving solely private parties. Its impact extends beyond those individuals connected with a particular lawsuit. Its precedential value is significant. To ensure that the law is enforced equally and fairly, the government's litigation must be conducted with uniformity and consistency. Only the Attorney General is in a position to perform such a task.

Moreover, we believe the unusual mandate of the Commission raises special and compelling reasons for not providing an exception to the Attorney General's general jurisdiction. As set forth in Executive Order No. 12435, §2(a), the Commission is to

> make a full and complete national and region-by-region analysis of organized crime; define the nature of traditional organized crime as well as emerging organized crime groups, the sources and amounts of organized crime income, and the uses to which organized crime puts its income; develop in-depth information on the participants in organized crime networks; and evaluate Federal laws pertinent to the efforts to combat organized crime.

Under this directive, almost any area relating to organized crime which is currently the subject of on-going Departmental law enforcement efforts could possibly fall under the Commission's scrutiny. For this reason, granting the Commission power to subpoena documents and witnesses raises the possibility that on-going Department law enforcement investigations and prosecutions could be inadvertently but seriously prejudiced by the actions of the Commission. Thus, while we fully support and welcome the broad scope of the Commission's activities, we believe it is crucial that the Attorney General, as the chief law enforcement officer of the United States, have the authority to disapprove attempts by the Commission to enforce the subpoenas.

There is an additional factor counselling in favor of review by this Department of the Commission's efforts to obtain documents and the testimony of witnesses. In seeking to obtain a fresh perspective on the problem of organized crime, the President has named to the Commission distinguished individuals from a wide variety of backgrounds in public and private life, none of whom are officers of the Executive branch and only a few of whom are full-time federal government employees. While we believe this independent viewpoint is a valuable asset to the Commission's undertaking, it also suggests that the Attorney General should be responsible for the exercise by the Commission of any coercive authority. Any attempt by the Commission to enforce subpoenas ordering citizens to testify or produce documents may raise sensitive constitutional and privacy concerns. In our view, it is inadvisable that these questions should be resolved by the Commission alone, without approval by the chief law enforcement officer of the United States, the Attorney General.

The Department of Justice endorses the purpose of H.J. Res. 548 in providing authority to issue subpoenas and to seek writs of habeas corpus for the Commission to accomplish the mandate established by Executive Order No. 12435. However, to authorize the Commission to conduct its own litigation would depart from sound policies underlying present law, and potentially undermine the law enforcement efforts of this Department. Accordingly, we strongly urge that H.J. Res. 548 be amended to provide that any litigation involving the Commission be conducted by the Attorney General.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's position.

Sincerely,

(Signed) Robert A. McConnell

ROBERT A. McCONNELL
Assistant Attorney General

Department of Justice

REMARKS

OF

THE HONORABLE WILLIAM FRENCH SMITH
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

THE PRESIDENT'S COMMISSION ON ORGANIZED CRIME

10:00 A.M.
TUESDAY, NOVEMBER 29, 1983
HENDERSON ROOM
DEPARTMENT OF STATE
WASHINGTON, D.C.

Thank you, Judge Kaufman and members of the commission. I am pleased to be here this morning as the President's Commission on Organized Crime formally undertakes its important mission.

Organized crime is a subject that affects all of us every day but generally is hidden from public view. It causes our taxes to go up, it adds to the cost of what we buy, and, worst of all, it threatens our personal safety and that of our families -- indeed our very freedom. Organized crime is an insidious cancer on our society, and it is clearly a principal law enforcement responsibility of the federal government to attack organized crime with the best weapons we can fashion.

Today I would like to begin by providing some context for this commission's work by reviewing the history of organized crime and the government's response to it.

Organized crime in America started out as a local enterprise. During the Nineteenth Century and until Prohibition, a gang worked a city, often just a neighborhood. There was no national connection and thus no nationally dominant group.

With the advent of Prohibition, organized crime became a national enterprise as it sought to market and distribute liquor throughout the country. Strife among gangs abated as cooperation

became necessary in the effort to control larger markets. A national criminal federation emerged. Meeting in New York in 1934, the nation's most powerful gangsters lent support to the idea of a national crime organization and acknowledged the territorial claims of 24 crime families in cities across the nation.

With the repeal of Prohibition, organized crime continued its national focus. During Prohibition the syndicates had acquired the accessories typical of a sophisticated business -- accountants, managers, and lawyers. When the bootlegging was over, they used their new capabilities in a variety of ways. In short, diversification took place. The syndicates renewed and increased previous involvements with gambling, prostitution, and narcotics. They also infiltrated the film industry's labor unions and used them for purposes of extortion. They began investing in businesses: entertainment, legal gambling, auto agencies, hotel chains, restaurants, taverns, jukebox concerns, laundries, clothing manufacturers, and racing and sports publications, and labor unions.

Not until 1950 did the federal government finally begin to give organized crime sustained attention. That year, an Attorney General's conference on organized crime was held. And in the Senate a special committee, directed by Senator Estes Kefauver, investigated gambling and racketeering activities in interstate commerce. Seven years later a Senate select committee under Senator John McClellan's leadership confirmed organized crime's involvement in the labor movement. Six years later, in 1963, Joseph Valachi, a life-long member of organized crime, described to a Senate committee and a national television audience the broad organizational structure and nationwide membership of a criminal confederation which he called "Cosa Nostra," meaning, literally, "our thing." Several years after Valachi spoke, a presidential commission described in detail the 24 core groups or families belonging to this national crime federation and made numerous recommendations for changes in the criminal law.

The work of these various groups led to the legislation and law enforcement mechanisms that have enabled the federal government to fight a more organized battle against organized

crime. But this battle has been fought only over the past two decades. Plainly, it would have been far better had the government studied and responded to organized crime decades earlier. The syndicates were effectively permitted to grow, and they did grow, into a national crime confederation, becoming so entrenched and so beyond the reach of law that the myth of the "untouchables" developed. We -- all of us as citizens -- are paying the price for the late response of the government to the nature and the threat of organized crime. And it is only in the past 15 years that the government has been able to make much headway against these crime cartels.

Even as federal law enforcement agencies have worked hard to catch up to the traditional crime families found in our major cities, new forms of organized crime have emerged throughout the nation. In just the past few years new groups have organized in pursuit of the lucrative profits that can be made in drug trafficking. Although traditional organized crime is heavily involved in the drug trade also, these new groups do not have places on that family tree. They are distinguishable. They include motorcycle gangs, prison gangs, and foreign-based organizations. Some of the names of these groups will be familiar but most are not. They are: Hell's Angels, Outlaws, Pagans, Bandidos, La Neustra Familia, Mexican Mafia, Aryan Brotherhood, Black Guerilla Family, Japanese Yakuza, Chinese Triad Societies, Israeli Mafia, and many, many more. Of the 425 cases under investigation by the Organized Crime Drug Enforcement Task Forces, which this administration established during the past year, only a small number involve traditional organized crime. Most involve the new cartels.

The emergence of these groups represents a new phase in the history of organized crime. So does the fact that organized crime has now experienced its latest evolution -- from national in focus to international. This event is also related to drug trafficking.

With the exception of marijuana -- and most of it is grown abroad -- and the synthetics, the illicit drugs used in the United States are grown and processed in other countries. The

historic relationships between organized crime families in New York and Chicago are strikingly similar to those now existing, for example, between organized criminals in New York and Palermo. We are in a new period in the government's battle against organized crime, one that requires not just a national but now also an international response.

History counsels the wisdom of learning as much as we can about the new crime cartels, and about the new international character of organized crime, as fast as can. In respect to the emerging crime groups, we must stay in front of the emerging cartels so that we are not in the position, as happened with respect to traditional organized crime, of having to play catch-up. In regard to the international side of organized crime, we must be in a position to monitor and break apart the connections between the organized crime groups in the United States and those abroad.

We are in a new period in the government's battle against organized crime, and I believe that this commission is in an excellent position to assist the government's law enforcement effort. There are many questions to which the Department of Justice has partial or tentative answers. We would like more complete answers to these questions. We would like a fuller picture. Among these questions -- and they are by no means an exhaustive list -- are the following:

In respect to traditional organized crime, what is the nature and extent of its operations today? What new activities is it involved in? How does it attempt to make itself seem legitimate? How and where does it invest its profits from criminal activities? How does it use the political process and public officials to further its ends?

In respect to the new emerging groups, who are they? How do they operate? Do they use the same techniques as traditional organized crime, or different ones? In addition to drug trafficking, what other criminal activities are they pursuing? And are some of them banding together to form larger crime organizations?

In respect to the new international focus of organized crime, what is the relationship between organized crime groups here and abroad? What are their other activities, in addition to drug trafficking? And what routes does their money take? How is it moved from one country to the next? What are the high-finances of this highly organized crime? And does organize crime abuse the bank secrecy laws? If so, how can this abuse be stopped?

A first effort by the government against the mob occurred in 1928 when Treasury Secretary Mellon began investigating Al Capone. Capone eventually was convicted for income tax evasion, but Secretary Mellon's exertions against Capone, although successful, obviously did not constitute a comprehensive federal response to organized crime.

Since that time we have learned the importance of having such a response. As I noted earlier, through the years various commissions and committees and other groups have studied organized crime and made important contributions to the federal law enforcement effort.

The work of a commission established under President Johnson in the mid-Sixties led to many important changes in the criminal law that have greatly strenghtened our hand in battling organized crime. The Omnibus Crime Control and Safe Streets Act of 1968 and the Organized Crime Control Act of 1970 incorporated all eight of that commission's recommendations regarding proof of criminal violations. These two acts have given us several important law enforcement tools and facilitated the proper use of electronic surveillance, which is so critical to gathering intelligence about organized crime.

I would hope that the work of this commission leads to similar changes in the law that will enable the federal government

more effectively to fight organized crime in what is, unquestionably, a new phase of its existence.

In recent years, the Department of Justice has made great strides forward in the battle against organized crime. The Organized Crime Strike Forces, established in the late 60s, have continued to lead the fight againt traditional organized crime. The Organized Crime Drug Enforcement Task Forces, established in just the past year, have enjoyed dramatic success already in their cases against the emerging crime cartels. Since 1981, the Department of Justice has convicted a total of 2,609 members and associates of organized crime. These convictions are one indication of our vigorous enforcement effort, which is part of our overall program to combat organized crime.

The Department of Justice -- the federal government -- cannot, however, do this job alone. Public knowledge of the activities of organized crime and public support for our law enforcement efforts are key to our success. That is why I also hope that the work of this commission substantially increases awareness of organized crime among all our citizens.

Thank you very much.

DOJ-1985-12

U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

TESTIMONY

BY

WILLIAM H. WEBSTER

DIRECTOR

FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

PRESIDENT'S COMMISSION ON ORGANIZED CRIME

WASHINGTON, D. C.

NOVEMBER 29, 1983

Judge Kaufman, distinguished members of the President's Commission on Organized Crime, I would like to express my appreciation for the opportunity to discuss organized crime and our efforts against those who have formed enterprises to break our Nation's laws. Although these criminal groups have often been glamorized in books, movies and television, they are associations of career criminals who operate with utter contempt for our laws and the rights of others. In short, they are purveyors of crime, violence, death and human misery.

A year ago, President Reagan announced a program to expose, prosecute and ultimately cripple organized crime in America. In describing the problem facing us, President Reagan said, "Today the power of organized crime reaches into every segment of our society...." As the Attorney General has indicated in congressional testimony and this morning, organized criminal activity represents the most serious crime problem in America today.

Both the President and the Attorney General have given an idea of the magnitude of the problem. This morning, I would like to further define organized crime and give some examples of our work in this area.

Organized Crime Defined

The FBI defines organized crime as criminal organizations whose primary objective is to obtain money through illegal activities. Such organizations are involved in every conceivable type of crime, including extortion, pornography, labor racketeering, bribery and murder. Their main sources of revenue, however, are narcotics and gambling.

But the activities of organized crime are not limited to open acts of criminality. Today, there are few businesses or industries in our communities that are not affected by organized criminal enterprises. This brand of crime is costing the American people billions of dollars every year. Those engaged in organized crime are "no-holds-barred" competitors who seek an edge. They don't face the problems of legitimate businesses, and seldom, if ever, are they concerned about a marketable product, overhead, the availability of capital or profit margins. Instead--and this is their hallmark--they concentrate on intimidation, extortion, fear and the corruption of public officials.

As an example, a major source of income for organized crime has been labor racketeering. There are substantial indications that several union locals are under some degree of mob control. Union treasuries and pension funds have been looted. Corrupt union officials have entered into sweetheart contracts with management, effectively depriving union members of fair representation and giving some companies an advantage.

Still another edge comes from the practice of putting laundered funds from illegal activities into legitimate enterprises. This allows organized crime to undercut competition by reducing the cost of doing business. By such

predatory tactics, organized crime enterprises have been successful in driving legitimate competitors out of business and creating for themselves a monopolistic effect in certain industries where their influence is substantial.

We have learned that the term "organized crime" is not synonymous with any one group. Instead, many varieties and combinations of criminal groups are properly included within our definition.

La Cosa Nostra

There does exist, however, one criminal organization that is national in scope--the La Cosa Nostra, also known as the LCN and referred to by some as the "syndicate" or the "mob." The LCN has its roots in secret societies that developed centuries ago in Italy. The LCN began to take its present shape in this country in the early 1930s.

Today, the LCN consists of a confederation of 24 "families," each operating within similar organizational structures and using similar methods. Though each member is affiliated with a particular family, all members recognize that they are part of a national organization. There is also substantial evidence of a "commission" that resolves inter-family disputes, ratifies new bosses and at times issues orders to families on matters of common concern.

The LCN has remained intact in this country largely as a result of its organizational structure and unyielding requirements of loyalty and discipline enforced by threats and violence. Although its members are tied together by common ancestry, blood relationships are not required or implied by the use of the term "family."

The LCN is most heavily concentrated in the Northeast and Midwest; however, it has operations in most states. In total, there are approximately 1,700 active members--down from over 2,000 not too many years ago. Death, age, inactivity for a variety of reasons and, to a significant measure, law enforcement pressure in recent years have combined to reduce the active membership. But these active members, also known as "made" members, have influence beyond their numbers. To

achieve a more accurate view of the influence of this group, the active membership should be multiplied by ten to properly take into account the people who are affiliated with these criminal enterprises.

Other Organized Crime Groups

The problem of organized crime in the '80s is by no means limited to the LCN. Other organized groups from varied geographic, ethnic and racial backgrounds are involved in illegal activities including the traditional rackets and narcotics. Like the LCN, these groups seek to protect themselves with vows of secrecy and loyalty, enforcing their strict discipline by threats and violence. In the major organizations, the bonds are strengthened by ethnic and family ties.

Outlaw Motorcycle Gangs

These other groups include outlaw motorcycle gangs such as the Hells Angels, the Bandidos, the Outlaws and the Pagans--known to us as the "Big Four." In some regions these ruthless gangs have established relationships with traditional organized crime families and are acting as enforcers.

We began investigating the activities of motorcycle gangs in organized crime in May, 1981. The impetus for our investigations was an extensive study that our Criminal Investigative Division conducted. This study revealed that the number of gangs, now about 800, as well as the size of individual gangs, had grown significantly in the previous ten years. In the process, many had become widespread and even international. Like the LCN, they have developed highly structured organizations. They use threats and violence to achieve their goals, and accumulate wealth through criminal activity, especially narcotics trafficking, which is their primary source of revenue.

Prison-Spawned Gangs

The prison-spawned gangs developed inside the California State Prison System in the 1960s. They remain mostly a West Coast phenomenon and are quasi-military, violence-prone, highly structured criminal enterprises that

operate both inside and outside prison walls. They engage in a wide range of criminal activities including narcotics and weapons trafficking, extortion, robbery and murder. These gangs include the Mexican Mafia, La Nuestra Familia, the Aryan Brotherhood and the Black Guerrilla Family.

Other Groups and General Discussion

Other groups emerging in this country include some that are ethnically oriented such as the Japanese Yakuza, the Chinese Triad Societies and others. We are looking at these groups today because we believe they will present formidable challenges to law enforcement in the future, and we want to be prepared.

The guiding principle of our Organized Crime Program is to reach beyond the streets to those who exercise real power and control. Because the leadership is well-insulated, we are emphasizing long-term investigations, the use of sensitive techniques such as selected informants, undercover operations and court-authorized wiretaps, and prosecutions under the Racketeer Influenced Corrupt Organizations Statute to reach the top people. These techniques help us understand how these organizations work and who controls them. They make it possible to penetrate the secrecy, loyalty and fear-induced silence that protect organized crime.

As diverse and numerous as organized crime groups are, I do not view our struggle against them as a hopeless situation. I believe we are making measurable inroads against organized crime, and I am quite proud of our performance over the past four years. In almost every major city where there is a major organized crime family, we have indicted and/or convicted the top echelon of the family. In the last three years, we have convicted more than 2,500 individuals in cases supervised under our Organized Crime Program. These significant convictions include more than 460 LCN members and their associates. A significant portion of our organized crime successes during the last fiscal year stems from our efforts in narcotics investigations.

Narcotics

As I have already noted, narcotics trafficking is an important source of organized crime revenue. In January, 1982, when we received concurrent jurisdiction with DEA, we had about 100 Agents working approximately 100 active narcotics investigations. Since then, the growth of FBI resources devoted to narcotics investigations has been substantial. As of November 15, 1983, over 875 Agents were committed to this work and the FBI was investigating over 1,600 narcotics and dangerous drug cases. More than 600 of these investigations were being conducted jointly with DEA.

Consistent with the national priorities in narcotics enforcement, we have directed our efforts against extensive involvement in heroin importation by the LCN; the manufacture and distribution of methamphetamines and PCP by outlaw motorcycle gangs throughout the United States; and international trafficking by cartels that have had a major impact in both the cocaine and heroin trade in the United States. During the last fiscal year, our efforts resulted in more than 700 narcotics convictions.

Organized Crime and Drug Enforcement Task Forces

We are also heavily involved in the President's Organized Crime and Drug Enforcement Task Forces under the leadership of the Attorney General. The task forces are fully operative and have brought to bear the combined resources of more than 1,200 Agents and prosecutors from the Department of Justice and the Department of the Treasury to combat organized crime and other major traffickers involved in drug abuse. This Presidential initiative has encouraged active participation by Federal, state and local law enforcement in developing a national strategy for handling drug investigations of mutual interest.

It is my view that this multiagency approach allows us to combine the best aspects of each agency and, therefore, mount an intensive, coordinated campaign against domestic and international drug trafficking. Although we do not expect an instantaneous solution, we are pleased with the progress of the

task forces thus far. With some satisfaction, I can say that 183 indictments involving 1,028 defendants were returned in task force cases by mid-November, 1983. So far, 194 defendants have been convicted.

Case Highlights

As impressive as statistics and program descriptions are, numbers don't tell the full story. To demonstrate the skill and dedication of our Agents, I would like to highlight a few organized crime cases for you.

One major operation has produced important racketeering convictions against organized crime figures in New York and Milwaukee and indictments in other parts of the country. This investigation involved several undercover FBI Agents and was directed at the illegal operations of the Bonanno "family" in Milwaukee and Florida, including their activities in the vending industry, sanitation business and after-hours club operations.

After being introduced to family members, one of our undercover Agents, Joe Pistone, was able to work his way into the family's confidence. With able assistance from fellow undercover Agents, he reached a level of trust with the Bonanno "family" that was unprecedented.

Our investigation led to the recent convictions of Benjamin Ruggiero, a capo in the New York Bonanno organized crime "family," and two of his soldiers, as well as the conviction of Milwaukee LCN "boss" Frank Balistrieri and two of his confederates in a related case. Other significant indictments were returned at Tampa, Florida, and trials are pending.

I am pleased to tell you that Joe Pistone, our undercover Agent who led a dangerous double life for six years, received the Attorney General's Distinguished Service Award last January. Joe and other undercover Agents have provided

invaluable insights into what we now know about organized crime.

Another successful undercover operation was initiated by our Charlotte Division in February, 1982. Following a series of murders by rival motorcycle gangs seeking to control illegal activities, we focused on the criminal involvement of the Hells Angels and the Outlaws. We gathered evidence of their crimes including narcotics violations, prostitution, extortion, interstate transportation of stolen property and numerous weapons violations.

In addition to the undercover technique, we used a well-placed source and audio and video monitoring equipment. Consensually monitored conversations of gang members implicated a former police officer and a police lieutenant in cocaine trafficking with the Outlaws. Further investigation, including purchases of narcotics by the undercover Agent, Special Agent Lance Emory, revealed a large-scale narcotics operation controlled by the violence-prone Outlaw gang. Our efforts resulted in the indictments, arrests and convictions of 16 gang members.

But the real significance of this case was the work of Special Agent Emory. He was able to penetrate this group of volatile individuals--people totally without discipline or regard for human life--to an extent that has never before been possible. The dangers encountered by Special Agent Emory--dangers rarely encountered by other Agents--cannot be overstated. Without any means of summoning help and without a firearm to protect himself, he was frequently in fear of losing his life inside gang clubhouses.

Another significant case I would like to comment on is our investigation and the trial of Roy Lee Williams, which focused national attention on the relationship between labor racketeering and organized crime. Although electronic surveillance has been used in all of the cases I have mentioned, this case, known to us as PENDORF, is a classic example of the use of these techniques and their importance to our Organized Crime Program.

During our investigation, we intercepted conversations by court-authorized Title III coverage that disclosed Allen Dorfman, Roy Lee Williams and others were conspiring to bribe former U. S. Senator Howard Cannon, then Chairman of the Senate Commerce Committee, in order to block legislation that would substantially deregulate the trucking industry. As you know, the trial ended with the conviction of Roy Lee Williams, President of the International Brotherhood of Teamsters, Allen M. Dorfman, business consultant who was later murdered in Chicago, Joseph Lombardo, Chicago organized crime figure, and others with organized crime and labor racketeering ties.

But this was more than the conviction of those who would corrupt our labor unions. These individuals were convicted of wire fraud and conspiracy to bribe a U. S. Senator in connection with legislation being considered by the Congress. In order to achieve their goals, those involved in organized crime are willing to corrupt the institutions sacred to our Nation. As we have seen, the Congress, state legislatures and our courts are not immune from organized crime's attempts to influence them.

Gambling, as I mentioned earlier, is a major source of organized crime revenue. In a recent case, 15 individuals, including the bosses of the LCN "families" in Chicago and Milwaukee and the underboss of the Kansas City "outfit" have been charged with skimming almost two million dollars in profits from several Las Vegas casinos since 1974. These indictments should relax the mob's grip on the gambling industry.

As I have already noted, organized crime, including the LCN, is highly involved in narcotics trafficking. I would, therefore, like to comment on a major investigation involving an LCN heroin smuggling and money laundering operation. In September of this year, following several months of investigation by the FBI, DEA and New York City Police, and with the able assistance of Italian authorities, we clearly identified a major heroin importation ring linking organized

crime figures from Sicily and the New York City area.

On the evening of September 13, 1983, a shipment of ceramic tile destined for a business establishment was stopped and examined by FBI, DEA and U. S. Customs personnel. Upon inspection, we located 40 pounds of heroin secreted inside the beams of the wooden pallets that held the tile. After seizing the heroin, we substituted a "look alike" substance and replaced the pallets. We then surveilled the shipment to the Buffalo, New York, business of the principal subject of our investigation. Through analysis of the bill of lading accompanying the tile shipment from Italy, we determined that these tiles originated from a small company near Milan, Italy.

On September 19, 1983, arrest warrants were obtained for eight people, seven of whom have been located and arrested. Two of those arrested had traveled from Sicily and were in the United States in connection with the delivery of the heroin. Execution of search warrants resulted in the seizure of 20 additional pounds of heroin, numerous handguns, jewelry and $150,000 in cash. Trials are pending in this matter.

Closing

I have highlighted only a few of the major investigations within our Organized Crime Program. I trust my remarks amply illustrate both the problem and our progress. The war against organized crime will not be easily won. It is a war that often requires great personal sacrifice. Last year, I visited one of our undercover Agents who was severely beaten and left for dead when his identity was discovered. We are grateful that incidents like this are not frequent. But our Agents understand the dangers involved in their work and yet

they go forward with the important work that the Congress, the President and the American people have assigned them.

In closing, I want to thank you, Judge Kaufman, and the members of this commission for allowing me to provide testimony on this important topic. Today's hearing, and your future activities, will be of tremendous service to the American public. They will disclose the enormous influence of organized crime on American society as well as the ruthlessness and violence associated with their activities.

After Adminstrator Mullen makes his opening remarks, we are prepared to answer any questions you may have.

TESTIMONY

BY

FRANCIS M. MULLEN, JR.

ADMINISTRATOR

DRUG ENFORCEMENT ADMINISTRATION

BEFORE THE

PRESIDENT'S COMMISSION ON ORGANIZED CRIME

WASHINGTON, D.C.
NOVEMBER 29, 1983

Mr. President, Attorney General Smith, Judge Kaufman, Judge Webster, members of the Commission, ladies and gentlemen, I am pleased to have the opportunity to address this first meeting of the President's Commission on Organized Crime. Earlier this morning, the Attorney General traced the roots of organized crime and Judge Webster placed the phenomenon of organized crime in a more contemporary context and described the FBI's programs to address the many types of organized criminal activity. This morning I will focus on just one aspect of the organized crime problem--drug trafficking--and how the Federal Drug Enforcement Administration leads a multifaceted investigative effort to immobilize the major drug trafficking organizations.

Drug trafficking is a continuing criminal enterprise in which a series of criminal laws are violated for financial gain. It requires the collaboration of a large number of people. The complex structure, pattern of racketeering and financial objectives are the predominant characteristics of drug organizations. They do not necessarily consist of individuals with the same ethnic background. Those drug organizations which are structured along ethnic lines often must depend on or actually ally with other groups in order to accomplish a particular aspect of the operation.

Organized criminal groups are involved across the whole spectrum of drug trafficking. They grow or manufacture drugs domestically, obtain illicit substances overseas, arrange for importation, and establish elaborate distribution networks throughout the United States.

Regardless of the specific drug involved, as in any business structure, drug trafficking organizations have various needs and hire individuals who will accomplish many tasks. They include: financiers, bankers, lawyers, logistics experts, exporters, importers, wholesalers, retailers and recruiters. This separation of functions promotes efficiency and protects the organization. The loss of any one member does not threaten the stability of the whole organization. Only the upper echelon has knowledge of the entire operating structure.

Drug trafficking organizations are involved in a broad range of financial activities as they generate and manipulate the extensive profits of the drug trade. DEA Domestic and international investigations of drug organizations focus not only on immobilizing the principal traffickers and seizing the drugs, but also on locating, seizing and forfeiting the tremendous sums tied to drug trafficking. Recent DEA investigations have uncovered drug money laundering operations which process approximately one million dollars a day.

The potential problems caused by the extraordinary amount of revenue generated by international drug sales are very serious and have worldwide ramifications. Consider the level of capital flight from consuming countries, such as the United States, to other nations and the implications for the world balance of trade. Drug source and transit countries which are cooperating in programs supported by the United States, such as eradication and crop control initiatives, are faced with genuine dilemmas as they simultaneously attempt to cope with major internal economic problems and falling international credit ratings. Offshore havens, where significant amounts of drug proceeds either transit

OR ARE PERMANENTLY HELD, MUST CONSIDER THAT COOPERATION WITH THE INTERNATIONAL LAW ENFORCEMENT COMMUNITY COULD POTENTIALLY UNDERMINE THE ECONOMIC BASE PROVIDED BY THEIR BANKING COMMUNITY.

DRUG ORGANIZATIONS TRANSFER BILLIONS OF DOLLARS OUT OF THE UNITED STATES TAX FREE. PORTIONS OF THIS LAUNDERED MONEY FREQUENTLY RETURN TO THE UNITED STATES UNDER THE GUISE OF FOREIGN BUSINESS OR "SHELL" COMPANIES WHICH TAKE FULL ADVANTAGE OF THE FAVORABLE PROVISIONS OF U.S. TAX LAWS ON FOREIGN INVESTORS. THE ORGANIZATION WITH ITS "REPATRIATED" FUNDS, HAS THUS EFFECTIVELY BEATEN THE TAX SYSTEM TWICE. WHEN THESE FUNDS RETURN TO THE UNITED STATES, ADDITIONAL ECONOMIC PROBLEMS RESULT FROM THE ADVERSE IMPACT THEY CAN HAVE ON LOCAL ECONOMIES.

ALL DRUG TRAFFICKING ORGANIZATIONS FACE THE PROBLEM OF HOW TO MANAGE THEIR MONEY, AND CRITICAL TO THAT MANAGEMENT IS THE MONEY LAUNDERER. TO EXPLAIN THE ROLE, THE VALUE, AND THE SERVICES OFFERED BY THE DRUG MONEY LAUNDERER, I WOULD LIKE TO DESCRIBE A RECENT DEA INVESTIGATION WHICH HIGHLIGHTS THIS ACTIVITY.

IN MARCH 1981, DEA BECAME AWARE OF NUMEROUS BANK ACCOUNTS WHICH HAD BEEN ESTABLISHED AND MANAGED ON BEHALF OF EDUARDO OROZCO, A COLOMBIAN BUSINESSMAN ALLEGEDLY INVOLVED IN THE IMPORTATION AND EXPORTATION OF COFFEE. BECAUSE OF THE FREQUENCY, SIZE AND MANNER IN WHICH DEPOSITS WERE BEING MADE INTO THESE ACCOUNTS, IT APPEARED THEY WERE BEING USED TO LAUNDER ILLEGAL MONIES. OROZCO CLAIMED THAT THE MONEY WAS GENERATED BY WEALTHY COLOMBIAN COFFEE MERCHANTS WHO USED HIS ORGANIZATION TO AVOID TAXES IN COLOMBIA AND TO PURCHASE MORE STABLE U.S. CURRENCY.

DEA'S FIRST STEP IN THIS INVESTIGATION WAS TO INTRODUCE OROZCO TO AN UNDERCOVER AGENT POSING AS A BANK OFFICIAL. DEA ATTEMPTED TO CORROBORATE OROZCO'S EXPLANATION ABOUT THE MONEY. A REVIEW OF THE INVOICES FILED WITH THE U.S. CUSTOMS SERVICE ON BEHALF OF TWO COFFEE FIRMS PROVED THAT OROZCO'S EXPLANATIONS WERE FALSE.

In October 1981, seven months after the initiation of this investigation, OROZCO confided to the DEA undercover agent about the true origins of the money and the elaborate precautions he had taken to safeguard his operation. The DEA agent learned that 60 to 70 percent of the monies being deposited into the account he had established on behalf of OROZCO was generated from drug trafficking. OROZCO said that the money couriers were provided with cover stories to explain the origin of the money should they be stopped by authorities; however, in the event of a cover story being broken, OROZCO would claim the money belonged to him and he would go to jail before divulging its true origins. His clients would supply money--as well as legal services--in the case of his arrest.

The association between the DEA undercover agent/banker and OROZCO continued on a friendly basis until December 1981, when on several occasions the undercover agent detected counter-surveillance by at least two private investigators OROZCO had hired to gather information about the agent. The investigators were able to trace the undercover telephone and in early January 1982, OROZCO confronted the agent with the possibility of his being a Federal agent. OROZCO even filed Freedom of Information requests to ascertain the scope of this investigation. (If I may at this time point out to the Commission that 82 percent of the requests made to DEA under the Freedom of Information Act originate with the criminal element.)

However, based on the information gathered during the undercover phase, DEA, in conjunction with the Internal Revenue Service and U.S. Customs Service, was able to identify 18 different accounts controlled by OROZCO. An analysis of these accounts showed that through the use of multiple transfers of money in and out of accounts over a short period of time, OROZCO had built a complex audit trail which provided his clients true anonymity. The investigation continued without the agent being undercover. Other investigative techniques were applied, including the first use of a court-authorized telex intercept order.

Final results of this investigation revealed that OROZCO had deposited in excess of $150 million through various accounts in an effort to avoid disclosure of the true owners of the monies. Further, he had imported $42 million into the United States without proper notification to the U.S. Customs Service. OROZCO was ultimately convicted of six counts including conspiracy, currency violations, false statements to government agencies and Travel Act violations. This was the first prosecution/conviction on conspiracy charges without a drug seizure and/or undercover drug negotiations involving a money laundering defendant.

During the course of this investigation, it was also learned that OROZCO had received in excess of $4.6 million on behalf of Antonio TURANO, a reputed "traditional organized crime" (TOC) figure. TURANO was arrested by DEA in October 1982 after attempting to import over 15 kilograms of heroin. TURANO was found shot to death, gangland style, in March 1983 in Queens, New York.

Organized criminal groups are generally categorized as either TOC or "nontraditional organized crime." The numerous complex organizations associated with each other in what is known as the Mafia, the Syndicate, or La Cosa Nostra are examples of TOC groups. These families are bound by blood, tradition and philosophy. Many of these TOC groups operate extensive, sophisticated and powerful drug trafficking networks which often rely on violence and corruption.

The investigation I am about to describe is an excellent example of the direct and continuing link between TOC families in the United States and Italy in the trafficking of heroin.

In August 1981, DEA received information that high-quality heroin was being distributed in the Bronx, New York. The investigation was initiated through a street purchase of heroin by an undercover agent. Through surveillance, DEA was able to identify the source as a well-documented TOC figure whom we

subsequently arrested. The investigation then expanded to the source of supply for this heroin, William IRIZARRY. Since the 1950's, IRIZARRY has been known as an upper-echelon international narcotic trafficker.

As the investigation progressed, DEA undercover agents were introduced to Francisco SOLIMENE, an international heroin trafficker who was reputed to be capable of handling 100 kilogram quantities of heroin at a time. Through drug purchases from SOLIMENE, his heroin sources were identified as either members or associates of the LUCHESE, GAMBINO and Sicilian IOC families.

A DEA undercover agent posing as a close associate of SOLIMENE requested a meeting with one of the sources of supply, Lorenzo DI CHIARA, a known Sicilian organized crimed figure. It was subsequently learned that while the undercover agent was meeting with DI CHIARA, an inquiry with the Department of Motor Vehicles was made by the violators regarding the registered owner of the vehicle which the undercover agent had used.

In October 1982, the DEA undercover agent was introduced to "Ernie Boy" ABBAMONTE, a well-documented international violator, close associate of DI CHIARA, and an associate of the LUCHESE organized crime family. ABBAMONTE stated that his organization could supply multi-kilograms of pure heroin on a continuing basis. ABBAMONTE's source of supply for heroin was allegedly capable of importing 50 kilogram quantities directly from Italy.

ABBAMONTE's method for delivering was to have his partner transport the heroin to a neutral location. Within a short time, the partner would communicate with ABBAMONTE via a beeper. ABBAMONTE would, at that moment, signal that the money was intact and to deliver the heroin. DEA agents received 9 kilograms of heroin from ABBAMONTE, one of the largest deliveries of heroin ever made to an undercover agent in the United States.

The 18 month investigation culminated with the indictment of

28 NARCOTIC TRAFFICKERS; 17 CLASS I AND SEVEN CLASS II VIOLATORS WERE ARRESTED. CONVICTIONS AND SIGNIFICANT SENTENCES WERE GIVEN TO THE MAJORITY OF THE VIOLATORS. SPIN OFF INVESTIGATIONS RESULTED IN THE DISRUPTION OF THREE ADDITIONAL MAJOR INTERNATIONAL HEROIN SMUGGLING ORGANIZATIONS OPERATING BETWEEN ITALY AND THE UNITED STATES.

THE DRUG-RELATED ORGANIZED CRIME PROBLEM IS NOT LIMITED TO TRADITIONAL ORGANIZED CRIME. IN THE PAST 20 YEARS, NEW ORGANIZED CRIMINAL ENTERPRISES THAT DEAL NOT ONLY IN DRUGS, BUT ALSO IN OTHER CRIMINAL ACTIVITIES TRADITIONALLY CONTROLLED BY THE "FAMILIES" HAVE EMERGED. OUTLAW MOTORCYCLE GANGS IMMEDIATELY COME TO MIND.

LAW ENFORCEMENT AGENCIES CURRENTLY ESTIMATE THAT THERE ARE NEARLY 1,000 OUTLAW MOTORCYCLE GANGS IN THE UNITED STATES. MANY OF THESE GANGS HAVE GRADUATED FROM LAWLESS, HELL-RAISING MOTORCYCLE RIDING OUTLAWS TO SOPHISTICATED CRIMINAL ORGANIZATIONS. THE LEADERS OF THESE GANGS OFTEN WEAR THREE-PIECE SUITS, DRIVE EXPENSIVE CARS, RUN LEGITIMATE BUSINESSES, AND ONLY WEAR THEIR "COLORS" OR RIDE THEIR BIKES ON SPECIAL OCCASIONS. THE LARGEST AND MOST SIGNIFICANT OF THESE GANGS ARE THE HELLS ANGELS, OUTLAWS, PAGANS AND BANDIDOS. THE HELLS ANGELS AND OUTLAWS HAVE CHAPTERS IN OTHER COUNTRIES, AS WELL.

OUTLAW MOTORCYCLE GANGS DERIVE THE BULK OF THEIR FINANCES FROM ILLEGAL ACTIVITIES INCLUDING PROSTITUTION, VEHICLE THEFT, BURGLARY AND THE MANUFACTURE AND DISTRIBUTION OF ILLICIT DRUGS. METHAMPHETAMINE AND PCP ARE THE DRUGS MOST OFTEN ASSOCIATED WITH OUTLAW MOTORCYCLE GANGS, BUT THEY ALSO TRAFFIC IN COCAINE, HEROIN AND METHAQUALONE. IT IS ESTIMATED THAT AT LEAST 60 PERCENT OF THE METHAMPHETAMINE AVAILABLE IN THIS COUNTRY IS CONTROLLED BY OUTLAW MOTORCYCLE GANGS.

We are seeing more and more interaction between the traditional organized crime networks and the motorcycle gangs in drug activities. For example, in the Mid-Atlantic states, the two have occasionally cooperated for mutual financial gain on various endeavors, including the distribution of methamphetamine.

Violent Colombian criminal organizations are exploiting the cocaine market in the United States. DEA has identified between 10 and 12 Colombian organizations which control the majority of the cocaine traffic to the United States. During the 1960s and 1970s, the Colombians expanded their roles as producers and couriers for other distribution networks to actual smuggling and distributing drugs themselves. Their power and influence now range from the coca growing areas in South America to the streets of the United States. Although they have gained a foothold in many U.S. cities, their primary infrastructure and U.S. distribution point remain in South Florida.

There are numerous DEA investigations which document the sophistication of these vast networks. It takes months, often years to identify the structure of the organization, infiltrate it, and subsequently immobilize it. I would like to give you an overview of just one of these investigations to demonstrate the obstacles law enforcement faces in pursuing the Colombian cocaine traffickers.

In September 1978, an informant described a large-scale cocaine trafficking organization based in the Queens, New York area that always had cocaine available, that maintained several "stash" locations, and whose memrers utilized beeper paging units, fictitious names, and a certain color vehicle to make their cocaine deliveries and money pickups. Surveillance led to three apartments which were rented by Jose SANTACRUZ. Warrants were obtained, and when these apartments were searched one month later, $127,000, 2.3 kilograms of cocaine, and records indicating a drug network doing $2.5 million worth of business <u>per month</u> were seized.

JOSE SANTACRUZ HAD BEEN A CENTRAL FIGURE IN A 1975 INVESTIGATION WHEREIN GILBERTO RODRIGUEZ SMUGGLED LARGE QUANTITIES OF COCA PASTE FROM PERU INTO COLOMBIA, WHERE IT WAS CONVERTED INTO COCAINE AND THEN SMUGGLED BY SANTACRUZ INTO THE UNITED STATES. THE INVESTIGATION RESULTED IN THE SEIZURE OF AN AIRCRAFT AND 292 KILOGRAMS OF COCA PASTE IN LIMA, PERU IN MARCH 1976. BOTH RODRIGUEZ AND SANTACRUZ ESCAPED APPREHENSION.

RECORDS SEIZED FROM THE SANTACRUZ APARTMENTS DURING THE OCTOBER 1978 SEARCH LED TO FURTHER SEARCHES OF NUMEROUS LOCATIONS IN NEW YORK AND FLORIDA. BANK STATEMENTS AND DEPOSIT TICKETS FOR BANK ACCOUNTS IN THE NAME OF JOSE SANTACRUZ AND THE NAME OF SANDRA ANA S.A. A PANAMANIAN COMPANY LISTING SANTACRUZ AS ITS PRESIDENT WERE ALSO LOCATED. THESE FINANCIAL RECORDS SERVED AS THE SPRINGBOARD FOR AN IN-DEPTH FINANCIAL INVESTIGATION RESULTING IN THE SEIZURE OF $327,000 FROM A MIAMI BANK ACCOUNT IN THE NAME OF SANDRA ANA S.A. AND, AT THE REQUEST OF THE UNITED STATES GOVERNMENT, THE SEIZURE BY THE SWISS GOVERNMENT OF $600,000 FROM AN ACCOUNT OF JOSE SANTACRUZ. FURTHER INVESTIGATION OF DOCUMENTS REVEALED CODED PHONE NUMBERS.

A SEARCH WARRANT EXECUTED ON A WAREHOUSE IN OPA LOCKA, FLORIDA IN MARCH 1980 RESULTED IN THE SEIZURE OF 126 KILOGRAMS OF PURE COCAINE, AND RECORDS REFLECTING THAT BETWEEN DECEMBER 1979 AND FEBRUARY 1980, AN ADDITIONAL 490 KILOGRAMS HAD BEEN DISTRIBUTED FROM THAT WAREHOUSE. THE RECORDS INDICATED THAT THIS ORGANIZATION HAD DISTRIBUTION NETWORKS IN MIAMI, LOS ANGELES AND NEW YORK.

DURING JANUARY 1981, THE INVESTIGATION REVEALED THAT A 622 ACRE RANCH WITH A 3,900 FOOT LANDING STRIP NEAR MONTGOMERY, ALABAMA HAD BEEN PURCHASED. INVESTIGATION DETERMINED THAT JAIME MUNERA HAD PAID CASH FOR CATTLE, EQUIPMENT, SEED, ETC. WHICH FAR EXCEEDED PRICES PAID BY A NORMAL FARMER. TO OFFSET THE FIRST ANNUAL MORTGAGE PAYMENT FOR THE RANCH, MUNERA RECEIVED A WIRE TRANSFER OF $100,000 FROM RODRIGUEZ' BANK IN PANAMA.

TITLE III WIRE INTERCEPT INFORMATION FROM MUNERA'S PHONE

REVEALED THAT THE ORGANIZATION HAD INTENDED TO UTILIZE THE RANCH FOR ITS SMUGGLING OPERATIONS BUT HAD SUFFERED A SERIES OF SET-BACKS. WHEN IT BECAME APPARENT THAT THE RANCH IN ALABAMA WAS NOT GOING TO BE USED BY THE ORGANIZATION, DEA TRACED THE FLOW OF FUNDS USED TO PURCHASE THE RANCH TO CASH DEPOSITS OF COCAINE SALES IN NEW YORK AND TRANSFERS OF FUNDS TO ACCOUNTS IN MIAMI TO DEPOSITS IN MUNERA'S ACCOUNT. AS A RESULT, IN DECEMBER 1981, THE RANCH WAS SEIZED. PRIOR TO THIS SEIZURE, JAIME MUNERA ADMITTED THAT HE HAD RECEIVED MONEY FROM RODRIGUEZ TO PURCHASE AND OPERATE THE RANCH AND THAT THE RANCH WAS TO BE UTILIZED TO FLY IN LOADS OF COCAINE.

THE INVESTIGATION INTO THE COCAINE TRAFFICKING ACTIVITIES OF RODRIGUEZ AND SANTACRUZ DID NOT END WITH THE SEIZURE OF THE RANCH IN ALABAMA. THERE ARE ONGOING INVESTIGATIONS IN CALIFORNIA, LOUISIANA, FLORIDA AND NEW YORK. THIS ORGANIZATION HAS EFFECTIVELY SHIELDED MANY OF ITS ACTIVITIES FROM LAW ENFORCEMENT PERSONNEL, AND KEY FIGURES REMAIN FREE DESPITE AN INTENSE INVESTIGATION SPANNING FIVE YEARS. IT RECENTLY HAS BEEN TIED TO MAJOR COCAINE SEIZURES IN THE SOUTHEAST. THIS CASE SHOWS HOW THE DEA'S EFFORTS ACHIEVE IMPRESSIVE RESULTS, BUT THAT THE TOTAL DISRUPTION OF A MAJOR DRUG TRAFFICKING ORGANIZATION HAS NOT YET BEEN ACHIEVED.

FROM THE WIDESPREAD INFLUENCE OF TRADITIONAL ORGANIZED CRIME, MOTORCYCLE GANGS AND COLOMBIAN GROUPS, I WOULD LIKE TO DESCRIBE TO YOU ONE MORE TYPE OF DRUG ORGANIZATION WHICH DEMONSTRATES THE SOMETIMES INGENIOUS ORGANIZATIONAL METHODS WHICH CAN BE APPLIED TO DRUG DISTRIBUTION.

YOUNG BOYS INC. (YBI) WAS A CLASSICALLY STRUCTURED RETAIL HEROIN DISTRIBUTION NETWORK OPERATING IN DETROIT, MICHIGAN FROM 1979 TO 1985. THE YBI ORGANIZATION CONSISTED OF APPROXIMATELY 450 YOUTHS, MOST OF WHOM WERE UNDER 18, SOME WERE AS YOUNG AS 11, WHO OPERATED AS CONTROLLERS, LIEUTENANTS, DRUG RUNNERS, MONEY RUNNERS OR ENFORCERS. YBI WAS KNOWN FOR ITS USE OF STRONG-ARM TACTICS AND VIOLENCE IN THE DETROIT AREA, AND SEVERAL MEMBERS

WERE IMPLICATED IN THE DEATHS OF TWO DETROIT POLICE DEPARTMENT OFFICERS.

YBI OPERATED IN THE FOLLOWING MANNER:

o MEMBERS WORE VARIOUS COLORED JOGGING SUITS AND SHOES WHICH DENOTED THEIR ROLES WITHIN THE ORGANIZATION, E.G. RED SUITS WERE WORN BY MONEY RUNNERS AND BLUE SUITS BY HEROIN RUNNERS.

o THE ORGANIZATION PROVIDED ITS MEMBERS WITH TUXEDOS WITH "YBI" INSIGNIAS ON THE BACK FOR USE AT SOCIAL ACTIVITIES.

o HEROIN PACKAGES WERE STAMPED WITH UNIQUE YBI LOGOS AND SOLD ON THE STREET IN "STREET-VENDOR" FASHION.

o THE YBI ORGANIZATION ACTIVELY RECRUITED MEMBERS ON THE STREET THROUGH THE USE OF CARS EQUIPPED WITH LOUDSPEAKERS.

o HOUSES WERE RENTED SPECIFICALLY FOR THE PURPOSE OF HEROIN CUTTING, PACKAGING, AND MONEY COLLECTION. EACH WAS EQUIPPED WITH SOPHISTICATED RADIO EQUIPMENT TO INTERCEPT POLICE RADIO ACTIVITY.

SINCE YBI WAS A STREET-LEVEL HEROIN DISTRIBUTION GROUP, RESPONSIBILITY FOR LAW ENFORCEMENT ACTION LAY INITIALLY WITH THE DETROIT POLICE DEPARTMENT. BECAUSE MOST OF THE MEMBERS OF THE ORGANIZATION WERE MINORS, EFFORTS TO PENETRATE AND DISBAND THE ORGANIZATION MET WITH LITTLE SUCCESS.

IN JANUARY 1982, DURING A DEA DETROIT INVESTIGATION, A DEA SPECIAL AGENT ACTING IN AN UNDERCOVER CAPACITY LEARNED THAT ONE OF THE SUSPECTS IN THE INVESTIGATION, SYLVESTER MURRAY, WAS A PROBABLE SOURCE OF SUPPLY TO THE YBI ORGANIZATION. A COOPERATIVE INVESTIGATION BETWEEN DEA AND THE DETROIT POLICE DEPARTMENT FOLLOWED.

DURING THE YEAR-LONG INVESTIGATION, MANY EFFECTIVE INVESTIGATIVE TECHNIQUES WERE UTILIZED INCLUDING UNDERCOVER AGENTS,

INFORMANTS, RECORD AND DOCUMENT ANALYSIS, AND PHYSICAL AND ELECTRONIC SURVEILLANCE. DEA DETERMINED THAT MURRAY HEADED AN ORGANIZATION CONSISTING OF TEN SUBORDINATES, ONE OF WHOM WAS MILTON "BUTCH" JONES, THE CONTROLLER OF YBI. IT WAS ESTIMATED THAT THE MURRAY/JONES/YBI GROUP ALONE NETTED $100,000 WEEKLY.

THE INVESTIGATION CULMINATED IN THE ARRESTS OF 41 TOP-LEVEL MEMBERS OF YBI IN DECEMBER 1982 AND THE CONVICTION OF 36 IN THE SUMMER OF 1983. MURRAY AND HIS CHIEF LIEUTENANT, MILTON "BUTCH" JONES, WERE CONVICTED OF CONDUCTING A CONTINUING CRIMINAL ENTERPRISE. SENTENCES RANGED FROM 15 YEARS AND $25,000 FINE ON EACH COUNT FOR THE MAJOR VIOLATORS TO SHORTER SENTENCES FOR THE LESSER MEMBERS OF THE ORGANIZATION. SEIZURES INCLUDED $548,000 IN REAL PROPERTY, $93,725 IN JEWELRY, $1,511,241 IN CASH AND 18 VEHICLES.

FROM THE DESCRIPTIONS OF THESE DRUG ORGANIZATIONS, IT IS READILY APPARENT THAT ALTHOUGH THE DRUGS, THE TECHNIQUES AND THE STRUCTURES VARY, THEY ALL OPERATE FINELY-TUNED AND PROFESSIONALLY MANAGED OPERATIONS. THEY ARE FLEXIBLE AND EASILY ADAPT TO CHANGING OR NEW LAW ENFORCEMENT APPROACHES. IN MANY RESPECTS, THEY ARE HYDRA-HEADED. WHILE DEA HAS HAD MAJOR SUCCESSES AGAINST THESE DRUG ORGANIZATIONS, BECAUSE OF THE PERCEIVED MINIMAL RISKS WHICH OUTWEIGH THE ENORMOUS PROFITS, THERE ARE ALWAYS NEW ORGANIZATIONS READY TO REPLACE THOSE DISMANTLED BY LAW ENFORCEMENT.

IN THE CASE OF THE YOUNG BOYS, FOR EXAMPLE, ALTHOUGH THE PRINCIPALS IN THAT HIERARCHY ARE NOW INCARCERATED, LESSER FIGURES WHO DEFECTED FROM THAT GROUP OR WHO WERE BEYOND THE SCOPE OF THE INVESTIGATION ARE NOW REPORTED TO HAVE "SPUN-OFF" AND FORMED A NEW HEROIN DISTRIBUTION RING, "PONY DOWN" (NAMED AFTER A RUNNING SHOE), WHICH EMPLOYS MANY OF THE SAME TACTICS OF THE YBI.

I AM ENCOURAGED BY THE PROGRESS THAT THE DRUG ENFORCEMENT ADMINISTRATION AND THE FEDERAL, STATE AND LOCAL ENFORCEMENT COMMUNITIES HAVE MADE TOGETHER IN DISMANTLING NUMEROUS ORGANIZATIONS INVOLVED IN NARCOTICS TRAFFICKING. IN THE PAST SEVERAL

YEARS, WE HAVE ACHIEVED RECORD ACCOMPLISHMENTS IN THIS AREA. DRUG SEIZURES ARE DOUBLING FROM YEAR TO YEAR. ARRESTS AND CONVICTIONS CONTINUE TO MOUNT: SEIZURES AND FORFEITURES OF DRUG-RELATED ASSETS ARE INCREASING DRAMATICALLY. IN FISCAL YEAR 1983, DRUG-RELATED ASSETS WORTH APPROXIMATELY $200 MILLION WERE SEIZED BY DEA AND OTHER FEDERAL AGENCIES FROM THE TRAFFICKERS.

THE FEDERAL AGENCIES RESPONSIBLE FOR INVESTIGATING THE MANY VIOLATIONS ATTENDANT WITH DRUG TRAFFICKING ARE ENJOYING THE SUPPORT OF THIS ADMINISTRATION. OUR MANPOWER HAS BEEN INCREASED. DEA NOW HAS OVER 2,100 AGENTS TO SUPPORT BOTH OUR DOMESTIC OPERATIONS AND INTERNATIONAL PROGRAMS. YET, ONLY SEVERAL YEARS AGO THERE WERE ONLY 1,806 AGENTS AND WE WERE IN DANGER OF EVEN FURTHER REDUCTIONS. THE GRANTING OF CONCURRENT JURISDICTION TO THE FEDERAL BUREAU OF INVESTIGATION TO ENFORCE THE FEDERAL DRUG LAWS HAS PROVIDED AN ADDITIONAL 800 AGENTS WHOSE EXPERTISE AND SUPPORT HAVE BEEN EXTREMELY BENEFICIAL TO THE FEDERAL EFFORT.

NUMEROUS SPECIAL PROGRAMS, LIKE THE SOUTH FLORIDA TASK FORCE AND THE ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES, HAVE PROVIDED RESOURCES, A FRESH IMPETUS, AND ENHANCED PUBLIC AWARENESS AND SUPPORT FOR THE DRUG ENFORCEMENT EFFORT. WE ARE ENCOURAGED BY THE MUCH-NEEDED CRIMINAL LEGISLATIVE REFORMS THAT ARE BEING SOUGHT WHICH WILL ENHANCE OUR ABILITY TO ENSURE THAT THOSE BROUGHT TO JUSTICE WILL NOT ESCAPE THEIR JUST DUE.

THE DRUG ABUSE PREVENTION EFFORT IS BEGINNING TO TAKE HOLD. SURVEYS REFLECT A HEALTHY CHANGE IN ATTITUDE AMONG THE YOUTH OF THIS COUNTRY. THEY ARE BEGINNING TO UNDERSTAND THE HARMFUL EFFECTS OF DRUGS AND ARE MORE INCLINED THAN AT ANY TIME IN RECENT MEMORY TO STAY AWAY FROM DRUGS. THE RESULTS OF DRUG ABUSE EDUCATION PROGRAMS, COUPLED WITH A STRICT ENFORCEMENT POLICY, ARE VERY EVIDENT IN THE MILITARY SERVICES, WHICH ARE NOW EXPERIENCING DECREASED LEVELS OF DRUG ABUSE.

YET, DRUG ABUSE CONTINUES TO HAUNT THIS NATION. THE COVER STORY IN NEWSWEEK MAGAZINE THIS PAST AUGUST CHRONICLED THE IMPACT

DRUG ABUSE HAS ON ALL FACETS OF MODERN AMERICAN LIFE. DRUG ABUSE HAS REACHED ITS TENTACLES INTO MIDDLE AMERICA.

DRUG ABUSE COSTS THIS NATION BILLIONS OF DOLLARS ANNUALLY IN TERMS OF LOST PRODUCTIVITY, HEALTH CARE, AND CRIMINAL JUSTICE EXPENDITURES. IN ADDITION, THE COSTS OF DRUG ABUSE TO OUR SOCIETY INCLUDE THE UNMEASURABLE EFFECTS OF DISREGARD FOR THE LAW, CORRUPTION OF PUBLIC OFFICIALS, LOSS OF CONFIDENCE IN GOVERNMENT, HIGH CRIME RATES, UNDERMINED MILITARY PREPAREDNESS, FAMILY AND COMMUNITY DISRUPTION, THREATS TO NATIONAL AND PUBLIC SECURITY, AND THE PAIN AND SUFFERING OF COUNTLESS INDIVIDUALS.

I BELIEVE THAT THIS COMMISSION HAS A VERY IMPORTANT TASK AHEAD--TO ACT AS AN INDEPENDENT BODY, OUTSIDE THE BOUNDS OF CONVENTIONAL LAW ENFORCEMENT, AND TO INFORM THE AMERICAN PEOPLE ABOUT THIS INSIDIOUS PROBLEM. FROM MY PERSPECTIVE AS ADMINISTRATOR OF THE DRUG ENFORCEMENT ADMINISTRATION, I HAVE FOUND NO BETTER ALLY IN THE WAR AGAINST DRUG THAN THE PARENTS OF THE UNITED STATES. I AM CERTAIN THAT THIS COMMISSION WILL FIND A PUBLIC EAGER FOR AN ASSESSMENT AND RECOMMENDATIONS ON HOW WE CAN STOP THE CRIME AND SOCIAL PROBLEMS BROUGHT ABOUT BY ORGANIZED CRIMINAL GROUPS.

THANK YOU.

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